VIRGINIA BOARD OF DENTISTRY

AGENDAS

September 8 and 9, 2011

Department of Health Professions

Perimeter Center - 9960 Mayland Drive, 2nd Floor Conference Center - Henrico, Virginia 23233

PAGE

September 8, 2011

Regulatory-Legislative Committee Meeting

2:00 p.m.	Call to Order – Herbert R. Boyd, III, DDS, Chair	
	Public Comment	
	Approval of Minutes - April 22, 2011	P1-P4
	Status Report on Regulatory Actions	P5
	Proposed Draft of Sedation/Anesthesia Regulations	P6-P22
	Response to Petitions for Rulemaking on Radiation Courses	P23-P33
	Dental Laboratory Work Order Forms	P34-P36
	Amendment of Guidance Document 60-13	P37-P44
	Discussion of the Guidance Document for Recovery of Disciplinary Costs	P45-P49
	Discussion of the Guidance Document on Advertising	
	Next Meeting	

September 9, 2011

Nominating Committee Meeting

8:30 a.m.	Approval of Minutes – September 17, 2010	A

Board Meeting

9:00 a.m.	Call to Order – Ms. Pace, President	
	Evacuation Announcement – Ms. Reen	
	Public Comment	
	Approval of Minutes - June 3, 2011	-1- to -8-
	June 14, 2011	-9- to -10-
	DHP Director's Report – Dr. Reynolds-Cane	

Update on Prescription Monitoring Program – Ralph Orr

Liaison/Committee Reports

- BHP – Dr. Levin
  No meeting since May 3, 2011
- AADB Report – Dr. Levin
- SRTA – Dr. Gokli
  Ms. Pace
- Exam Committee – Dr. Cutright
  - August 18, 2011 Draft minutes **-11- to -12-**
  - August 19, 2011 Draft minutes **-13- to -16-**
- Regulatory/Legislative Committee – Dr. Boyd

Legislation and Regulation – Ms. Yeatts

- Status Report on Regulatory Actions **P5**
- Proposed Draft of Sedation/Anesthesia Regulations **P6-P22**
- Response to Petitions for Rulemaking on Radiation Courses **P23-P33**

Board Discussion/Action

- Public Comment Topics
- NERB Information on Score Reports **-17- to -21-**
- AADB Proposed Advertising Guidelines **-22- to -34-**

Report on Case Activity – Mr. Heaberlin **-35-**

Executive Director's Report/Business – Ms. Reen

- AADB participation and membership

Board Counsel Report – Mr. Casway

Recommedation of Credentials Committee
CLOSED MEETING HELD pursuant to §2.2-3711(A)(28) and §2.2-3712(F)

- **Case # 135193**
- **Case # 139166**

Exam Committee Meeting

1:30 p.m. **Call to Order – Martha C. Cutright, DDS, Chair**

Public Comment

Approval of Minutes - August 18, 2011 **-11- to -12-**
August 19, 2011 **-13- to -16-**

Review of Advisory Forum discussions

Plan next steps for exploring exam alternatives

Plan next steps for law exam development

ADJOURN

VIRGINIA BOARD OF DENTISTRY
MINUTES OF REGULATORY/LEGISLATIVE COMMITTEE
April 22, 2011

TIME AND PLACE: The meeting of the Regulatory/Legislative Committee of the Board of Dentistry was called to order at 10:00 a.m., on April 22, 2011 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Herbert R. Boyd., D.D.S., Chair

MEMBERS PRESENT: Meera A. Gokli, D.D.S.
Robert B. Hall, Jr., D.D.S.
Jacqueline G. Pace, R.D.H.

MEMBERS ABSENT: None

OTHER BOARD MEMBERS PRESENT: Martha Cutright, D.D.S.
Augustus A. Petticolas, Jr., D.D.S.
Jeffrey Levin, D.D.S.

STAFF PRESENT: Alan Heaberlin, Acting Executive Director
Donna Lee, Discipline Case Manager

OTHERS PRESENT: Howard M. Casway, Senior Assistant Attorney General
Elaine Yeatts, Senior Policy Analyst, Department of Health Professions

ESTABLISHMENT OF A QUORUM: With all members of the Committee present, a quorum was established.

PUBLIC COMMENT: **Kimberly Sillaway**, spoke on behalf of Virginia Society of Oral Maxillofacial Surgeons (VSOMS) and stated that the society applauds the Committee for its review of the regulations. Ms. Sillaway stated that she would like the Committee to consider a revision in proposed regulation 18VAC60-21-100, to further define "physical injury" as a respiratory, cardiovascular or neurological complication and proposed a change where a dentist must report a physical injury from the time the patient departs the treatment facility from 72 hours to twenty-four.

Michele Satturlund, spoke on behalf of the Virginia Association of Nurse Anesthetists. Ms. Satturlund stated that for 18VAC60-21-280(2) she would like the Committee to consider adding the words "or as appropriate" after the words "five minutes." Also on page 26 of the Dentistry Regulations dealing with moderate sedation, she would like the Committee to consider including temperature measuring devices as part of the equipment list for moderate sedation.

MINUTES:

Dr. Boyd asked the members to review page 3 of the March 10, 2011 meeting minutes under 18VAC60-21-80 to make sure it was an accurate reflection of the meeting. No changes or corrections were made. Dr. Hall moved to accept the minutes. The motion was seconded and passed.

DRAFT OF DISCIPLINE CHAPTER:

Ms. Yeatts stated that some portions of the regulations governing the disciplinary process had already been adopted or are currently in effect. The Executive Committee earlier adopted regulations for Recovery of Disciplinary Costs, and the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

Page 1

18VAC60-35-10 – Dr. Levin moved that the Committee recommend approval to the Board. The motion was seconded and passed.

Page 2

18VAC60-35-20 – Dr. Gokli moved that the Committee recommend approval to the Board. The motion was seconded and passed.

DRAFT OF DENTAL ASSISTANT II CHAPTER:

Page 6

18VAC60-25-110(3) – delete "the licensee uses" so as to read, "**Misrepresenting to a patient and the public the materials or methods and techniques used or intended to be used"**

18VAC60-25-110(5) – after the word "hygienist," add **"or Dental Assistant II to any person who is not authorized by this chapter;"**

Dr. Gokli moved that the Committee recommend to the Board approval of Chapter 30 as amended. The motion was seconded and passed.

DRAFT OF DENTAL HYGIENE CHAPTER:

Page 5

18VAC60-25-60(C) – The Committee discussed whether this section may conflict with 54.1-2712 and 54.1-2722 of the Code.

Dr. Levin moved to remove 18VAC60-25-60(C) in the Dental Hygiene Regulations and 18VAC60-21-120(D) in the Dentistry Regulations, page 9. The motion was seconded and passed.

Page 6

18VAC60-25-90 – Dr. Levin moved to add a No. 3 written as **"Conducting preliminary dental screenings in free clinics, public health programs or in a voluntary practice."** The motion was seconded and passed.

18VAC60-25-60(D)(1) – remove the word **"comprehensive"** after the word "periodic."

18VAC60-25-60(D)(3) – Ms. Yeatts informed the Committee that this wording is not consistent with the wording in the Dentistry Regulations and that it should be the same in both chapters.

Dr. Petticolas moved that 18VAC60-21-120(F)(3) of the Dentistry Regulations, page 10, be changed to the same wording as 18VAC60-25-60(D)(3). The motion was seconded and passed.

Page 6

18-VAC60-25-60(E) – Mr. Levin moved to remove the first sentence of this regulation. The motion was seconded and passed.

Ms. Pace moved that the Committee recommend approval of Chapter 25 as amended to the Board. The motion was seconded and passed.

(Recessed at 11:30 a.m.)

Dr. Levin left the meeting at this time.

(Reconvened at 11:43 a.m.)

DRAFT OF DENTAL PRACTICE CHAPTER:

Page 8

18VAC60-21-90(B)(3) – After, "Diagnosis and options discussed," add, **"including the risks and benefits of treatment or non-treatment and the estimated cost of treatment options."** No. 4 will become No. 5. The new No. 4 reads **"Consent for treatment obtained and treatment rendered;"** Ms. Pace moved that these amendments be made. The motion was seconded and passed.

Page 9

18VAC60-21-100 –Dr. Hall moved to remove **"traumatic"** and change **"72" to "24"**. After the word "injury" add the words **"or a respiratory, cardiovascular or neurological complication."** The motion was seconded and passed.

Page 10

18VAC60-21-120(F)(1) remove the word, "examined" and replaced with **"performed a periodic examination of."**

Page 12

18VAC60-21-190 – Dr. Petticolas inquired as to whether the Board could streamline the application process when a dentist with a current active license retires but would like to obtain a volunteer license. Ms. Yeatts stated that she and Mr. Heaberlin would review the application process to determine if it could be simplified.

Page 24

18VAC60-21-280(E)(1)(2)(3) – Dr. Boyd instructed Dr. Hall, Mr. Heaberlin, and Ms. Yeatts to do further research on this portion of the regulation and present their findings to the Board at its June Board meeting. It was agreed by consensus to defer action.

Page 29

18VAC60-21-300(F)(1) – Dr. Boyd instructed Dr. Hall, Mr. Heaberlin, and Ms. Yeatts to provide the Board at its June Board meeting with a definition of what is considered baseline vital signs. It was agreed by consensus to defer action.

Dr. Gokli moved that the Committee recommend approval of Chapter 21 as amended, pending further approval of the sedation regulations, to the Board. The motion was seconded and passed.

NEXT MEETING: To be announced at the June Board meeting. Dr. Boyd thanked all Board members for their attendance and assistance in the process for periodic review of the regulations.

ADJOURNMENT: Dr. Boyd adjourned the meeting at 1:25 p.m.

Herbert R. Boyd, III, D.D.S., Chair

Alan Heaberlin, Acting Executive Director

Date

Date

Agenda Item: **Regulatory Actions - Chart of Regulatory Actions**

Staff Note: Attached is a chart with the status of regulations for the Board

Action: None – provided for information only

Chapter	Action / Stage Information	
Virginia Board of Dentistry Regulations [18 VAC 60 - 20]	Action:	Periodic review; reorganization of chapter
	Stage:	NOIRA - *Register Date: 8/2/10 Proposed regulations adopted 6/3/11*
Virginia Board of Dentistry Regulations [18 VAC 60 - 20]	Action:	Training in pulp capping for dental assistants II
	Stage:	Fast-Track - *At Governor's Office for 26 days*
Virginia Board of Dentistry Regulations [18 VAC 60 - 20]	Action:	Radiation certification
	Stage:	Fast-Track - *At Secretary's Office for 75 days*
Virginia Board of Dentistry Regulations [18 VAC 60 - 20]	Action:	Recovery of disciplinary costs
	Stage:	Final - *At Governor's Office for 24 days*
Virginia Board of Dentistry Regulations [18 VAC 60 - 20]	Action:	Registration of mobile clinics
	Stage:	Final - *At Governor's Office for 61 days* ***Emergency regulations expired on 7/6/11***

Agenda Item: Emergency Regulations for Dental Permits in General Anesthesia/Deep Sedation or Conscious/Moderate Sedation

Included in agenda package:

Copy of Chapter 526 of the 2011 Acts of the Assembly (SB1146)

Copy of Draft emergency regulations
(Regulatory/Legislative Committee with consider draft regulations and make recommendations at its meeting on 9/8/11)

Action: Motion to adopt emergency regulations as recommended by the Committee or with additional amendments
Motion to publish a Notice of Intended Regulatory Action to replace the emergency regulations

CHAPTER 526

An Act to amend the Code of Virginia by adding a section numbered 54.1-2709.5, relating to sedation and anesthesia in dental offices.

[S 1146]

Approved March 25, 2011

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 54.1-2709.5 as follows:

§ 54.1-2709.5. Permits for sedation and anesthesia required.

A. Except as provided in subsection C, the Board shall require any dentist who provides or administers sedation or anesthesia in a dental office to obtain either a conscious/moderate sedation permit or a deep sedation/general anesthesia permit issued by the Board. The Board shall establish by regulation reasonable education, training, and equipment standards for safe administration and monitoring of sedation and anesthesia to patients in a dental office.

B. A permit for conscious/moderate sedation shall not be required if a permit has been issued for the administration of deep sedation/general anesthesia.

C. This section shall not apply to:

1. An oral and maxillofacial surgeon who maintains membership in the American Association of Oral and Maxillofacial Surgeons (AAOMS) and who provides the Board with reports which result from the periodic office examinations required by AAOMS; or

2. Any dentist who administers or prescribes medication or administers nitrous oxide/oxygen or a combination of a medication and nitrous oxide/oxygen for the purpose of inducing anxiolysis or minimal sedation consistent with the Board's regulations.

2. That the Board of Dentistry shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

Emergency Regulations for Sedation/Anesthesia Permits

Virginia Board of Dentistry

18VAC60-20-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale or use of dental methods, services, treatments, operations, procedures or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures or products.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"Anxiolysis" means the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness.

~~"Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands, produced by pharmacological or nonpharmacological methods, including inhalation, parenteral, transdermal or enteral, or a combination thereof.~~

"CODA" means the Commission on Dental Accreditation of American Dental Association.

"Conscious/moderate sedation" means a drug-induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

"Deep sedation~~/general anesthesia~~" means ~~an induced state of depressed consciousness or unconsciousness accompanied by a complete or partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to physical stimulation or verbal command and is produced by a pharmacological or nonpharmacological method or a combination thereof~~ a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully

following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

"Dental assistant I " means any unlicensed person under the direction of a dentist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely a secretarial or clerical capacity.

"Dental assistant II" means a person under the direction and direct supervision of a dentist who is registered to perform reversible, intraoral procedures as specified in this chapter.

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to a dental assistant II for completion the same day or at a later date. The dentist prepares the tooth or teeth to be restored and remains immediately available to the dental assistant II for guidance or assistance during the delivery of treatment and related services. The dentist examines the patient to evaluate the treatment and services before the patient is dismissed.

"Direction" means the level of supervision that a dentist is required to exercise with a dental hygienist, a dental assistant I or a dental assistant II or that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"Enteral" is any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).

"General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"General supervision" means that a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. The order may authorize the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"Immediate supervision" means the dentist is in the operatory to supervise the administration of sedation or provision of treatment.

"Indirect supervision" means the dentist examines the patient at some point during the appointment, and is continuously present in the office to advise and assist a dental hygienist or a

dental assistant who is (i) delivering hygiene treatment, (ii) preparing the patient for examination or treatment by the dentist or dental hygienist, or (iii) preparing the patient for dismissal following treatment.

"Inhalation" means a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness.

"Local anesthesia" means the loss of sensation or pain in the oral cavity or the maxillofacial or adjacent and associated structures generally produced by a topically applied or injected agent without depressing the level of consciousness.

"Minimal sedation" means a minimally depressed level of consciousness, produced by a pharmacological method, which retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected.

"Monitoring" means to observe, interpret, assess and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part IV.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Radiographs" means intraoral and extraoral x-rays of hard and soft tissues to be used for purposes of diagnosis.

18VAC60-20-30. Other fees.

A. Dental licensure application fees. The application fee for a dental license by examination, a license to teach dentistry, a full-time faculty license, or a temporary permit as a dentist shall be $400. The application fee for dental license by credentials shall be $500.

B. Dental hygiene licensure application fees. The application fee for a dental hygiene license by examination, a license to teach dental hygiene, or a temporary permit as a dental hygienist shall be $175. The application fee for dental hygienist license by endorsement shall be $275.

C. Dental assistant II registration application fee. The application fee for registration as a dental assistant II shall be $100.

D. Wall certificate. Licensees desiring a duplicate wall certificate or a dental assistant II desiring a wall certificate shall submit a request in writing stating the necessity for a wall certificate, accompanied by a fee of $60.

E. Duplicate license or registration. Licensees or registrants desiring a duplicate license or registration shall submit a request in writing stating the necessity for such duplicate, accompanied by a fee of $20. If a licensee or registrant maintains more than one office, a notarized photocopy of a license or registration may be used.

F. Licensure or registration certification. Licensees or registrants requesting endorsement or certification by this board shall pay a fee of $35 for each endorsement or certification.

G. Restricted license. Restricted license issued in accordance with § 54.1-2714 of the Code of Virginia shall be at a fee of $285.

H. Restricted volunteer license. The application fee for licensure as a restricted volunteer dentist or dental hygienist issued in accordance with § 54.1-2712.1 or § 54.1-2726.1 of the Code of Virginia shall be $25.

I. Returned check. The fee for a returned check shall be $35.

J. Inspection fee. The fee for an inspection of a dental office shall be $350.

K. Mobile dental clinic or portable dental operation. The application fee for registration of a mobile dental clinic or portable dental operation shall be $250. The annual renewal fee shall be $150 and shall be due by December 31. A late fee of $50 shall be charged for renewal received after that date.

L. Conscious/moderate sedation permit. The application fee for a permit to administer conscious/moderate sedation shall be $100. The annual renewal fee shall be $100 and shall be due by March 31. A late fee of $35 shall be charged for renewal received after that date.

M. Deep sedation/general anesthesia permit. The application fee for a permit to administer conscious/moderate sedation shall be $100. The annual renewal fee shall be $100 and shall be due by March 31. A late fee of $35 shall be charged for renewal received after that date.

Part IV. Anesthesia, Sedation and Analgesia.

18 VAC 60-20-107. General provisions.

A. This part (18 VAC 60-20-107 et seq.) shall not apply to:

1. The administration of local anesthesia in dental offices; or

2. The administration of anesthesia in (i) a licensed hospital as defined in § 32.1-123 of the Code of Virginia or state-operated hospitals or (ii) a facility directly maintained or operated by the federal government.

B. Appropriateness of administration of general anesthesia or sedation in a dental office.

1. Anesthesia and sedation may be provided in a dental office for patients who are Class I and II as classified by the American Society of Anesthesiologists (ASA).

2. Conscious sedation, deep sedation or general anesthesia shall not be provided in a dental office for patients in ASA risk categories of Class IV and V.

3. Patients in ASA risk category Class III shall only be provided general anesthesia, deep sedation, conscious/moderate sedation or minimal sedation by:

a. A dentist after he has documented a consultation with their primary care physician or other medical specialist regarding potential risk and special monitoring requirements that may be necessary; or

b. An oral and maxillofacial surgeon after performing an evaluation and documenting the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary.

C. Prior to administration of sedation or general anesthesia, the dentist shall discuss the nature and objectives of the anesthesia or sedation planned along with the risks, benefits and alternatives and shall obtain informed, written consent from the patient or other responsible party. The written consent shall be maintained in the patient record.

D. The determinant for the application of these rules shall be the degree of sedation or consciousness level of a patient that should reasonably be expected to result from the type and dosage of medication, the method of administration and the individual characteristics of the patient as documented in the patient's record. The drugs and techniques used must carry a margin of safety wide enough to render the unintended reduction of or loss of consciousness unlikely factoring in titration, and the patient's age, weight and ability to metabolize drugs.

E. ~~A dentist who is administering anesthesia or sedation to patients prior to June 29, 2005 shall have one year from that date to comply with the educational requirements set forth in this chapter for the administration of anesthesia or sedation.~~ When conscious/moderate sedation, deep sedation or general anesthesia is administered, the patient record shall also include:

1. Notation of the patient's American Society of Anesthesiologists classification;

2. Review of medical history and current conditions;

3. Written informed consent for administration of sedation and anesthesia and for the dental procedure to be performed;

4. Pre-operative vital signs;

5. A record of the name, dose, strength of drugs and route of administration including the administration of local anesthetics with notations of the time sedation and anesthesia were administered;

6. Monitoring records of all required vital signs and physiological measures recorded every five minutes; and

7. A list of staff participating in the administration, treatment and monitoring including name, position and assigned duties.

F. Pediatric patients.

No sedating medication shall be prescribed for or administered to a child aged 12 and under prior to his arrival at the dentist office or treatment facility.

G. Emergency management.

If a patient enters a deeper level of sedation than the dentist is qualified and prepared to provide, the dentist shall stop the dental procedure until the patient returns to and is stable at the intended level of sedation.

18VAC60-20-110. Requirements for a permit to administer deep sedation/general anesthesia.

A. ~~Educational requirements~~ After March 31, 2012, no dentist may employ or use deep sedation/general anesthesia in a dental office unless he has been issued a permit by the board. This requirement shall not apply to an oral and maxillofacial surgeon who maintains membership in the American Association of Oral and Maxillofacial Surgeons (AAOMS) and who provides the board with reports which result from the periodic office examinations required by AAOMS.

B. To determine eligibility for a deep sedation/general anesthesia permit, a dentist shall submit the following:

1. A completed application form;

2. The application fee as specified in 18VAC60-20-30; and

3. A copy of the certificate of completion of a CODA accredited program or other documentation of training content which meets the educational and training qualifications specified in subsection C;

4. A copy of current certification in ACLS or PALS as required in subsection C.

C. Educational and training qualifications for a deep sedation/general anesthesia permit.

1. A dentist may ~~employ or~~ be issued a permit to use deep sedation/general anesthesia ~~on an outpatient basis~~ in a dental office by meeting one of the following educational criteria. ~~and by posting the educational certificate, in plain view of the patient, which verifies completion of the advanced training as required in subdivision 1 or 2 of this subsection~~. These requirements shall not apply nor interfere with requirements for obtaining hospital staff privileges.

~~1.~~a. ~~Has completed~~ Completion of a minimum of one calendar year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program in conformity with published guidelines by the American Dental Association (Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry) in effect at the time the training occurred; or

~~2.~~b. Completion of ~~an American Dental Association approved~~ a CODA accredited residency in any dental specialty which incorporates into its curriculum a minimum of one calendar year of full-time training in clinical anesthesia and related clinical medical subjects (i.e. medical evaluation and management of patients), comparable to those set forth in published guidelines by the American Dental Association for Graduate and Postgraduate Training in Anesthesia in effect at the time the training occurred.

~~After June 29, 2006, dentists~~ 2. Dentists who administer deep sedation/general anesthesia shall hold current certification in advanced resuscitative techniques with hands-on simulated airway and megacode training for healthcare providers, such as courses in Advanced Cardiac Life Support (ACLS) for Health Professionals or Pediatric Advanced Life Support (PALS) for Health Professionals and current Drug Enforcement Administration registration.

~~B. Exceptions.~~

~~1. A dentist who has not met the requirements specified in subsection A of this section may treat patients under deep sedation/general anesthesia in his practice if a qualified anesthesiologist or a dentist who fulfills the requirements specified in subsection A of this section, is present and is responsible for the administration of the anesthetic.~~

~~2. If a dentist fulfills the requirements specified in subsection A of this section, he may employ the services of a certified nurse anesthetist.~~

~~C.~~D. Posting. Any dentist who utilizes deep sedation/general anesthesia shall post with the dental license and current registration with the Drug Enforcement Administration, the ~~certificate of education~~ deep sedation/general anesthesia permit required under subsection A of this section.

E. Delegation of administration.

1. A dentist not qualified to administer deep sedation and general anesthesia shall only use the services of a dentist with a current deep sedation/general anesthesia permit or an anesthesiologist to administer deep sedation or general anesthesia in a dental office. In a licensed outpatient surgery center, a dentist not qualified to administer deep sedation or general anesthesia shall use

either a permitted dentist, an anesthesiologist or a certified registered nurse anesthetist to administer deep sedation or general anesthesia.

2. A dentist qualified pursuant to subsection B may administer or use the services of the following personnel to administer deep sedation or general anesthesia:

a. A dentist with a current deep sedation/anesthesia permit;

b. An anesthesiologist; or

c. A certified registered nurse anesthetist under the medical direction and indirect supervision of a dentist who meets the educational requirements of subsection B of this section.

3. Preceding the administration of deep sedation or general anesthesia, a permitted dentist may use the services of the following personnel under indirect supervision to administer local anesthesia to numb the injection or treatment site:

a. A dental hygienist with the training required in 18VAC60-20-81 to parenterally administer Schedule VI local anesthesia to persons age 18 or older; or

b. A dental hygienist, dental assistant, registered nurse or licensed practical nurse to administer Schedule VI topical oral anesthetics.

~~D.~~F. Emergency equipment and techniques. A dentist who administers deep sedation/general anesthesia shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway and cardiopulmonary resuscitation, and shall maintain the following emergency equipment in ~~the dental facility~~ working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Full face mask for children or adults, as appropriate for the patient being treated;

2. Oral and nasopharyngeal ~~airways~~ airway management adjuncts;

3. Endotracheal tubes for children or adults, or both, with appropriate connectors or other appropriate airway management adjunct such as a laryngeal mask airway;

4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades for children or adults, or both;

5. Source of delivery of oxygen under controlled positive pressure;

6. Mechanical (hand) respiratory bag;

7. Pulse oximetry and blood pressure monitoring equipment available and used in the treatment room;

8. Appropriate emergency drugs for patient resuscitation;

9. EKG monitoring equipment and temperature measuring devices;

10. Pharmacologic antagonist agents;

11. External defibrillator (manual or automatic); ~~and~~

12. For intubated patients, an End-Tidal CO^2 monitor;

13. Suction apparatus;

14. Throat pack; and

15. Precordial or pretracheal stethoscope.

~~E.~~G. Monitoring requirements.

1. The treatment team for deep sedation/general anesthesia shall consist of the operating dentist, a second person to monitor and observe the patient and a third person to assist the operating dentist, all of whom shall be in the operatory with the patient during the dental procedure.

2. Monitoring of the patient under deep sedation/general anesthesia, including direct, visual observation of the patient by a member of the team, is to begin prior to induction of anesthesia and shall take place continuously during the dental procedure and recovery from anesthesia. The person who administered the anesthesia or another licensed practitioner qualified to administer the same level of anesthesia must remain on the premises of the dental facility until the patient has regained consciousness and is discharged.

3. Monitoring deep sedation/general anesthesia shall include the following: ~~recording and reporting of blood pressure, pulse, respiration and other vital signs to the attending dentist.~~

a. Baseline vital signs shall be taken and recorded prior to administration of any controlled drug at the facility to include: temperature, blood pressure, pulse, pulse oximeter, oxygen saturation, respiration and heart rate.

b. The patient's vital signs shall be monitored, recorded every five minutes and reported to the treating dentist throughout the administration of controlled drugs and recovery. When depolarizing medications are administered temperature shall be monitored constantly.

c. A secured intravenous line must be established and maintained throughout the procedure.

H. Discharge requirements.

1. The patient shall not be discharged until the responsible licensed practitioner determines that the patient's level of consciousness, oxygenation, ventilation and circulation are satisfactory for discharge and vital signs have been taken and recorded.

2. Postoperative instructions shall be given verbally and in writing. The written instructions shall include a 24 hour emergency telephone number.

3. Patients shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

18VAC60-20-120. Requirements for a permit to administer conscious/moderate sedation.

A. After March 31, 2012, no dentist may employ or use conscious/moderate sedation in a dental office unless he has been issued a permit by the board. This requirement shall not apply to an oral and maxillofacial surgeon who maintains membership in the American Association of Oral and Maxillofacial Surgeons (AAOMS) and who provides the board with reports which result from the periodic office examinations required by AAOMS.

B. Automatic qualification. Dentists ~~qualified~~ who hold a current permit to administer deep sedation/general anesthesia may administer conscious/moderate sedation.

C. To determine eligibility for a conscious/moderate sedation permit, a dentist shall submit the following:

1. A completed application form indicating one of the following permits for which the applicant is qualified:

a. Conscious/moderate sedation by any method;

b. Conscious/moderate sedation by enteral administration only; or

c. Temporary (one-year) conscious/moderate sedation permit;

2. The application fee as specified in 18VAC60-20-30;

3. A copy of a transcript, certification or other documentation of training content which meets the educational and training qualifications as specified in D or E, as applicable; and

4. A copy of current certification in ACLS or PALS as required in subsection F.

~~B.~~D. Educational requirements for ~~administration of~~ a permit to administer conscious/moderate sedation by any method.

1. A dentist may be issued a conscious/moderate sedation permit to employ or use any method of conscious sedation by meeting one of the following criteria:

a. Completion of training for this treatment modality according to guidelines published by the American Dental Association (Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry) in effect at the time the training occurred, while enrolled at an accredited dental program or while enrolled in a post-doctoral university or teaching hospital program; or

b. Completion of ~~an approved~~ a continuing education course, offered by a provider approved in 18VAC60-20-50, and consisting of 60 hours of didactic instruction plus the management of at least 20 patients per participant, demonstrating competency and clinical experience in parenteral conscious sedation and management of a compromised airway. The course content shall be consistent with guidelines published by the American Dental Association (Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry) in effect at the time the training occurred.

2. A dentist who was self-certified in anesthesia and conscious sedation prior to January 1989 may be issued a temporary conscious/moderate sedation permit to continue to administer only conscious sedation until (date of one year after effective date of emergency regulations). After (date), a dentist shall meet the requirements for and obtain a conscious/moderate sedation permit by any method or by enteral administration only.

~~C.~~E. Educational requirement for enteral administration of conscious sedation only. A dentist may be issued a conscious/moderate sedation permit to only administer conscious sedation by an enteral method if he has completed ~~an approved~~ a continuing education program, offered by a provider approved in 18VAC60-20-50, of not less than 18 hours of didactic instruction plus 20 clinically-oriented experiences in enteral and/or combination inhalation-enteral conscious sedation techniques. The course content shall be consistent with the guidelines published by the American Dental Association (Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry) in effect at the time the training occurred. The certificate of completion and a detailed description of the course content must be maintained.

~~D.~~F. Additional training required.

~~After June 29, 2006, dentists~~ Dentists who administer conscious sedation shall hold current certification in advanced resuscitation techniques with hands-on simulated airway and megacode training for health care providers, such as Advanced Cardiac Life Support (ACLS) for Health Professionals or Pediatric Advanced Life Support (PALS) for Health Professionals ~~as evidenced by a certificate of completion posted with the dental license, and current registration with the Drug Enforcement Administration~~.

G. Posting. Any dentist who utilizes conscious/moderate sedation shall post with the dental license and current registration with the Drug Enforcement Administration, the conscious/moderate sedation permit required under subsection A and issued in accordance with subsection C of this section.

H. Delegation of administration.

1. A dentist not qualified to administer conscious/moderate sedation shall only use the services of a permitted dentist or an anesthesiologist to administer such sedation in a dental office. In a licensed outpatient surgery center, a dentist not qualified to administer conscious/moderate sedation shall use either a permitted dentist, an anesthesiologist or a certified registered nurse anesthetist to administer such sedation.

2. A qualified dentist may administer or use the services of the following personnel to administer conscious/moderate sedation:

a. A dentist with the training required by subsection D to administer by an enteral method;

b. A dentist with the training required by subsection C to administer by any method;

c. An anesthesiologist;

d. A certified registered nurse anesthetist under the medical direction and indirect supervision of a dentist who meets the education and training requirements of subsection C or D; or

e. A registered nurse upon his direct instruction and under the immediate supervision of a dentist who meets the education and training requirements of subsection C.

3. If minimal sedation is self-administered by or to a patient age 13 or above before arrival at the dental office, the dentist may only use the personnel listed in subdivision 2 of this subsection to administer local anesthesia. No sedating medication shall be prescribed for or administered to a child aged 12 and under prior to his arrival at the dentist office or treatment facility.

4. Preceding the administration of conscious/moderate sedation, a qualified dentist may use the services of the following personnel under indirect supervision to administer local anesthesia to numb the injection or treatment site:

a. A dental hygienist with the training required by 18VAC60-20-81 to parenterally administer Schedule VI local anesthesia to persons age 18 or older; or

b. A dental hygienist, dental assistant, registered nurse or licensed practical nurse to administer Schedule VI topical oral anesthetics.

~~E.~~I. Emergency equipment and techniques. A dentist who administers conscious sedation shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway and cardiopulmonary resuscitation, and shall maintain the following emergency airway equipment in ~~the dental facility~~ working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Full face mask for children or adults, as appropriate for the patient being treated;

2. Oral and nasopharyngeal ~~airways~~ airway management adjuncts;

3. Endotracheal tubes for children or adults, or both, with appropriate connectors or other appropriate airway management adjunct such as a laryngeal mask airway and a laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades for children or adults, or both. ~~In lieu of a laryngoscope and endotracheal tubes, a dentist may maintain airway adjuncts designed for the maintenance of a patent airway and the direct delivery of positive pressure oxygen~~;

4. Pulse oximetry;

5. Blood pressure monitoring equipment;

6. Pharmacologic antagonist agents;

7. Source of delivery of oxygen under controlled positive pressure;

8. Mechanical (hand) respiratory bag; ~~and~~

9. Appropriate emergency drugs for patient resuscitation;

10. Defibrillator;

11. Electrocardiographic monitor;

12. Suction apparatus;

13. Temperature measuring device;

14. Throat pack; and

15. Precordial and pretracheal stethoscope.

~~F.~~J. Monitoring requirements.

1. The administration team for conscious sedation shall consist of the operating dentist and a second person to assist, monitor and observe the patient. Both shall be in the operatory with the patient throughout the dental procedure.

2. Monitoring of the patient under conscious sedation, including direct, visual observation of the patient by a member of the team, is to begin prior to administration of sedation, or if medication is self-administered by the patient, when the patient arrives at the dental office and shall take place continuously during the dental procedure and recovery from sedation. The person who administers the sedation or another licensed practitioner qualified to administer the same level of

sedation must remain on the premises of the dental facility until the patient is responsive and is discharged.

3. Monitoring conscious/moderation sedation shall include the following:

a. Baseline vital signs shall be taken and recorded prior to administration of any controlled drug at the facility and prior to discharge.

b. Blood pressure, oxygen saturation, pulse and heart rate shall be monitored continually during the administration and recorded every five minutes.

c. Monitoring of the patient under moderate sedation is to begin prior to administration of sedation, or, if pre-medication is self-administered by the patient, immediately upon the patient's arrival at the dental office and shall take place continuously during the dental procedure and recovery from sedation. The person who administers the sedation or another licensed practitioner qualified to administer the same level of sedation must remain on the premises of the dental facility until the patient is evaluated and is discharged.

K. Discharge requirements.

1. The patient shall not be discharged until the responsible licensed practitioner determines that the patient's level of consciousness, oxygenation, ventilation and circulation are satisfactory for discharge and vital signs have been taken and recorded.

2. Postoperative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.

3. Patients shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

18VAC60-20-135. Ancillary personnel.

~~After June 29, 2006, dentists~~ Dentists who employ ancillary personnel to assist in the administration and monitoring of any form of conscious/moderate sedation or deep sedation/general anesthesia shall maintain documentation that such personnel have:

1. Minimal training resulting in current certification in basic resuscitation techniques with hands-on airway training for healthcare providers, such as Basic Cardiac Life Support for Health Professionals or ~~an approved,~~ a clinically oriented course devoted primarily to responding to clinical emergencies offered by an approved provider of continuing education as set forth in 18 VAC 60-20-50 C; or

2. Current certification as a certified anesthesia assistant (CAA) by the American Association of Oral and Maxillofacial Surgeons or the American Dental Society of Anesthesiology (ADSA).

Agenda Item: Response to Petition for Rulemaking on Radiation Courses

Included in agenda package:

Copies of petitions

Copy of comments on petitions

Copy of guidance document adopted on 6/3/11

Copy of fast-track regulations adopted on 6/3/11

Staff note:

Since the comment period on the petitions did not close until 6/22/11, the Board could not officially respond to the petitions at the June board meeting.

Action:

Motion to respond to the petitioners that the Board has acted in response to the petitions by adoption of a guidance document on interpretation of section 195 on radiation certification and by adoption of amendments to that section by a fast-track action.

COMMONWEALTH OF VIRGINIA
Board of Dentistry

9960 Mayland Drive, Suite 300
Richmond, Virginia 23233-1463

(804) 367-4538 (Tel)
(804) 527-4428 (Fax)

Petition for Rule-making

The Code of Virginia (§2.2-4007) and the Public Participation Guidelines of this board require a person who wishes to petition the board to develop a new regulation or amend an existing regulation to provide certain information. Within 14 days of receiving a valid petition, the board will notify the petitioner and send a notice to the Register of Regulations identifying the petitioner, the nature of the request and the plan for responding to the petition. Following publication of the petition in the Register, a 21-day comment period will begin to allow written comment on the petition. Within 90 days after the comment period, the board will issue a written decision on the petition.

Please provide the information requested below. (Print or Type)

Petitioner's full name (Last, First, Middle initial, Suffix,) Daniel, Nancy, L		
Street Address J. Sargeant Reynolds Community College 700 East Jackson Street	**Area Code and Telephone Number** 804-523-5380	
City Richmond	**State** Virginia	**Zip Code** 23219
Email Address (optional) ndaniel@reynolds.edu	**Fax (optional)** 804-786-5298	

Respond to the following questions:

1. What regulation are you petitioning the board to amend? Please state the title of the regulation and the section/sections you want the board to consider amending.

18 VAC 60-20 – Regulations Governing the Practice of Dentistry and Dental Hygiene

2. Please summarize the substance of the change you are requesting and state the rationale or purpose for the new or amended rule.

To amend regulations to permit CODA accredited dental assisting programs to offer a radiation safety course to non-certified individuals in the State of Virginia.
The Dental Assisting Program at J. Sargeant Reynolds is requesting permission to continue to offer DNA 135 – Dental Radiation Safety (2 credits) - that is already established within the VCCS curriculum.

3. State the legal authority of the board to take the action requested. In general, the legal authority for the adoption of regulations by the board is found in § 54.1-2400 of the Code of Virginia. If there is <u>other</u> legal authority for promulgation of a regulation, please provide that Code reference.

Code of Virginia - 54.1-2400 – General powers and duties of health regulatory boards
#1 – To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.

Signature: Nancy L. Daniel Date: 5/12/11

COMMONWEALTH OF VIRGINIA
Board of Dentistry

9960 Mayland Drive, Suite 300
Richmond, Virginia 23233-1463

(804) 367-4538 (Tel)
(804) 527-4428 (Fax)

Petition for Rule-making

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Please provide the information requested below. (Print or Type)

Petitioner's full name (Last, First, Middle initial, Suffix,)		
Ann M. Bruhn		
Street Address 4608 Hampton Blvd, Health Science Bldg	**Area Code and Telephone Number** 757-683-3851	
City Norfolk	**State** Virginia	**Zip Code** 23529
Email Address (optional) abruhn@odu.edu	**Fax (optional)**	

Respond to the following questions:

1. What regulation are you petitioning the board to amend? Please state the title of the regulation and the section/sections you want the board to consider amending.

   18 VAC60-20-195 clause (iii) which states: *No person not otherwise licensed by this board shall place or expose dental x-ray film unless he has (iii) satisfactorily completed a course and passed an examination in compliance with guidelines provided by the board*

2. Please summarize the substance of the change you are requesting and state the rationale or purpose for the new or amended rule.

   I would like the Board to reconsider removing clause (iii) of 18 VAC 6-20-195. Unlicensed individuals in the State of Virginia will now only be able to obtain a Dental Radiation Safety Certificate if they take a CODA approved radiation course, are certified by the American Registry of Radiologic Technologists or take a course and pass an exam given by the Dental Assisting National Board. This will greatly limit the availability of radiation safety certified individuals who would be able to expose dental radiographs in the State of Virginia. To resolve this, accredited dental hygiene schools could be permitted to offer the radiation safety portion of the oral radiology course, meeting the need for unlicensed individuals to be certified in radiation safety.

3. State the legal authority of the board to take the action requested. In general, the legal authority for the adoption of regulations by the board is found in § 54.1-2400 of the Code of Virginia. If there is <u>other</u> legal authority for promulgation of a regulation, please provide that Code reference.

Signature: Ann Bruhn

Date: 4/18/11

COMMONWEALTH OF VIRGINIA
Board of Dentistry

9960 Mayland Drive, Suite 300
Richmond, Virginia 23233-1463

(804) 367-4538 (Tel)
(804) 527-4428 (Fax)

Petition for Rule-making

The Code of Virginia (§ 2.2-4007) and the Public Participation Guidelines of this board require a person who wishes to petition the board to develop a new regulation or amend an existing regulation to provide certain information. Within 14 days of receiving a valid petition, the board will notify the petitioner and send a notice to the Register of Regulations identifying the petitioner, the nature of the request and the plan for responding to the petition. Following publication of the petition in the Register, a 21-day comment period will begin to allow written comment on the petition. Within 90 days after the comment period, the board will issue a written decision on the petition.

Please provide the information requested below. (Print or Type)

Petitioner's full name (Last, First, Middle initial, Suffix,) Michele Darby		
Street Address 800 North Villier Court	**Area Code and Telephone Number** 757-340-4176	
City Virginia Beach	**State** Virginia	**Zip Code** 23452
Email Address (optional)	**Fax (optional)**	

Respond to the following questions:

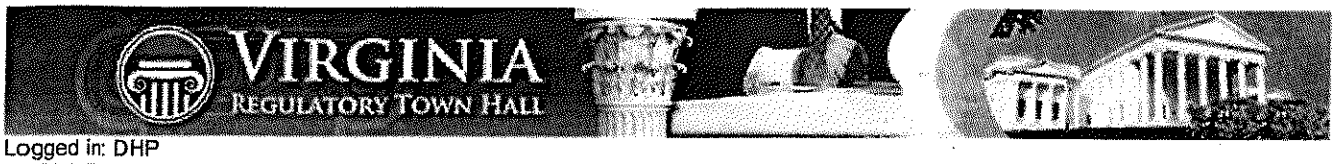
1. What regulation are you petitioning the board to amend? Please state the title of the regulation and the section/sections you want the board to consider amending.
   18 VAC60-20-195 clause (iii) which states: *No person not otherwise licensed by this board shall place or expose dental x-ray film unless he has (iii) satisfactorily completed a course and passed an examination in compliance with guidelines provided by the board*

2. Please summarize the substance of the change you are requesting and state the rationale or purpose for the new or amended rule.

The change in 18VAC60-20-195, which no longer allows unlicensed individuals to satisfactorily complete a course and pass an examination in compliance with guidelines provided the board is a problem for on the job trained dental asssitants and their employers. The Commonwealth of Virginia must have for competent individuals to place and expose intraoral dental radiographs and the Board of dentistry is responsible to ensure that the public is protected. These individuals cannot expose dental radiographs without the knowledge on how to safely use ionizing radiation . Accredited dental hygiene programs, who teach this information to dental hygiene students who also expose radiogrpahs, should be able to offer courses on radiation safety protocols and dispense radiation safety certificates to those individuals who pass an examination.

3. State the legal authority of the board to take the action requested. In general, the legal authority for the adoption of regulations by the board is found in § 54.1-2400 of the Code of Virginia. If there is <u>other</u> legal authority for promulgation of a regulation, please provide that Code reference.

Signature:
Date: 5/24/11



Logged in: DHP

Agency **Department of Health Professions**

Board **Board of Dentistry**

Chapter **Virginia Board of Dentistry Regulations [18 VAC 60 - 20]**

All comments for this forum

Commenter: Tara Newcomb, Old Dominion University * 5/26/11

Radiation Safty 17601

The change in 18VAC60-20-195, which no longer allows unlicensed individuals to satisfactorily complete a course and pass an examination in compliance with guidelines provided the board, should be reconsidered. There is a large need in the State of Virginia for competent individuals to place and expose intraoral dental radiographs. These individuals cannot expose dental radiographs without the knowledge on how to safely use ionizing radiation for diagnostic purposes. To meet this large state-wide need, accredited dental hygiene programs should be able to give a course on radiation safety protocols and dispense radiation safety certificates to those individuals who pass an examination. Other opperating feilds with radiation exposure have simular requirements and dental radiography should be no different. Please protect the public and ensure that proper testing of healthcare professionals is mandetory when exposing the public, including children, to ionized radiation.

Thank you,

Tara Newcomb

Commenter: Margaret Lemaster, BSDH, MS * 5/27/11

Dental Radiation Safety Course Must Continue 17602

Type over this text and enter you

The change in 18VAC60-20-195 allows unlicensed individuals to expose the public to ionized radiation. This must not be allowed. In the interest of public safety, Virginia must not regress. Satisfactory completion of a course and passing an examination should be reinstated. There is a large need in the State of Virginia for competent individuals to place and expose intraoral dental radiographs. These individuals cannot expose dental radiographs without the knowledge on how to safely use ionizing radiation for diagnostic purposes. To meet this large state-wide need, accredited dental hygiene programs should be able to give a course on radiation safety protocols and dispense radiation safety certificates to those who pass an examination.

r comments here. You are limited to approximately 3000 words.

Commenter: Nancy Daniel CDA J. Sargeant Reynolds Community College * 6/1/11

17612

Radiation Certification 18VAC60-20-195

There is a lot of confustion concerning the change to this regulation based on the phone calls and emails I have received in my office since May 11th. The new regulation states in part (iii) "satisfactorily completed a radiation course and passed an examination given by the Dental Assisting National Board". I believe the confusion is the part that addreses "radiation course". Is it the online course offered by DANB or courses previously offered by various institutions in the state? I think it would help if the BOD would clarify this part of the regulation. If the decision is made to allow short radiation courses to once again be offered in the State of Virginia, then it may be feasible that only CODA accredited programs would be authorized. CODA accredited programs have always followed strict standards concerning radiology within their existing curriculum. These standards are required by the ADA. These same standards matriculate down into the shorter versions that have previously been offered. I personally feel that challenging the DANB radiology exam certainly is an excellent idea but it must be remembered that the exam does not have a hands-on practical portion. The exam is only offered in a written form or by computer. Dental offices will still be required to give instruction on exposing and processing x-rays to new employees.

Commenter: Vicki Brett BS, RDH, CDA/ Medical Careers Institute Program Director * 6/21/11

17659

18VAC60-20-195 Radiation certification regulations

In reading the 18VAC60-20-195 Radiation certification regulations, I am presuming that;

(i) satisfactorily completed a course or examination recognized by the Commission on Dental Accreditation of the American Dental Association **(A CODA approved dental assisting/dental hygiene/dentistry program and passing the approved final exam).**

(ii) been certified by the American Registry of Radiologic Technologists **(Military trained dental assistants).**

(iii) satisfactorily completed a radiation course and passed an examination given by the Dental Assisting National Board **(Non-CODA-accredited dental assisting/hygiene program and passing the DANB RHS EXAM).**

In my opinion all three pathways teach Radiation Safety for patient and operator, processing, mounting, labeling, and exposure/evaluate techniques. New regulation (iii) certainly needs to be addressed. Does this also mean that the two day Dental Radiography courses that were provided for years in Virginia by several dental assisting and dental hygiene schools are still approved as long as the DANB RHS Exam is taken and passed? I believe this is the issue that needs more clarification. Also, the DANB RHS EXAM can be taken without any prior education or experience (no eligibility requirements). Is this accepted? It is of my opinion that the DANB RHS EXAM is very comprehensive and you must be extremely knowledgeable to pass it.

Back to List Comments

* Nonregistered public user

	VA.R. Document Number: R____-_____
	Virginia Register Publication Information
5/3/2011 3:37 pm Date / Time filed with the Register of Regulations	

Transmittal Sheet: Response to Petition for Rulemaking

[X] Initial Agency Notice [ ] Agency Decision

Promulgating Board: Board of Dentistry

Regulatory Coordinator: Sandra Reen
(804)367-4437
sandra.reen@dhp.virginia.gov

Agency Contact: Elaine J. Yeatts
Agency Regulatory Coordinator
(804)367-4468
elaine.yeatts@dhp.virginia.gov

Contact Address: Department of Health Professions
9960 Mayland Drive, Suite 300
Richmond, VA 23233

Chapter Affected:

18 vac 60 - 20:	Virginia Board of Dentistry Regulations

Statutory Authority: State: Chapter 27 of Title 54.1

Federal:

Date Petition Received 05/03/2011

Petitioner Ann Bruhn

Petitioner's Request

To amend regulations to permit accredited dental hygiene schools to offer radiation safety course for unlicensed persons to be certified in radiation safety.

Agency Plan

The Board is requesting public comment on the petition to amend regulations relating to radiation safety certification. The Board will consider the need for amendment at its meeting on June 3, 2011 and will respond to the petition following the close of the comment period.

Publication Date 05/23/2011 *(comment period will also begin on this date)*

Comment End Date 06/22/2011

Virginia Board of Dentistry

Guidance for Completion of Radiation Certification

In order for a dental assistant to be qualified to place or expose dental x-ray film, he or she must meet qualifications set forth in Section 195 of regulations of the Board of Dentistry as follows:

18VAC60-20-195. Radiation certification.

No person not otherwise licensed by this board shall place or expose dental x-ray film unless he has (i) satisfactorily completed a course or examination recognized by the Commission on Dental Accreditation of the American Dental Association, (ii) been certified by the American Registry of Radiologic Technologists, or (iii) satisfactorily completed a radiation course and passed an examination given by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

The Board interprets satisfactory completion of a "course or examination recognized by the Commission on Dental Accreditation of the American Dental Association" to include a course with examination provided by a dental assisting, dental hygiene or dentistry program accredited by the Commission on Dental Accreditation of the American Dental Association.

Project 2827 – Fast-track

Adopted by Board on June 3, 2011

BOARD OF DENTISTRY

Radiation safety certification

18VAC60-20-195. Radiation certification.

No person not otherwise licensed by this board shall place or expose dental x-ray film unless he has one of the following: ~~satisfactorily completed~~ satisfactory completion of a radiation safety course ~~or~~ and examination ~~recognized~~ given by an institution that maintains a program in dental assisting, dental hygiene or dentistry accredited by the Commission on Dental Accreditation of the American Dental Association, (ii) ~~been certified~~ certification by the American Registry of Radiologic Technologists, or (iii) ~~satisfactorily completed a radiation course and passed an~~ satisfactory completion of the Radiation Health and Safety Review Course provided by the Dental Assisting National Board or its affiliate and passage of the Radiation Health and Safety examination given by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

Certification Statement:

I certify that this regulation is full, true, and correctly dated.

_____ (Signature of certifying official)

Name and title of certifying official: Sandra K. Reen, Executive Director

Name of agency: Board of Dentistry, Department of Health Professions

Date:_____

Virginia Board of Dentistry
Regulatory/Legislative Committee
September 8, 2011

Dental Laboratory Work Order Forms

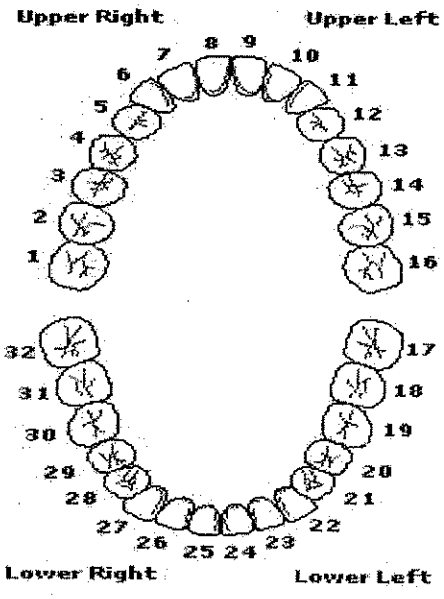
The Board reviewed an initial draft of two forms to be prescribed by the Board at its December 3, 2010 meeting. Following discussion, the Board requested that the Regulatory/Legislative Committee to develop the forms to make clear the intent is to prescribe the minimum content required by the Board and to consider whether the forms should be issued as a guidance document.

VIRGINIA BOARD OF DENTISTRY APPROVED
DENTAL LABORATORY WORK ORDER FORM

This form is prescribed by the Board for use by its licensees as required by §54.1-2719 of the **Code of Virginia**. A licensee shall provide all the information required to complete the form. A licensee may use a different form only if all the required information on this form is collected and conveyed.

PATIENT NAME, INITIALS or ID#: _____

Laboratory Name: _____
Physical Address: _____
_____
E-mail Address: _____
Contact Person: _____



Description of work to be done (include diagrams if needed):

_____
_____
_____
_____
_____
_____
_____
_____

Specify the type and quality of materials to be used:

_____
_____

Dentist's Signature: _____ Date: _____
Dentist's Name Printed: _____ Dental License # _____
Dentist's Address: _____ Telephone: _____
Dentist's Email Address: _____

Laboratory must furnish dentist with subcontractor work order form if the dental lab uses a subcontractor and must comply with all items below:

1. Prior to beginning work, the prescribing dentist must be notified of any foreign subcontractor involved in fabrication or component/materials supply.
2. Prior to beginning work, the prescribing dentist must be notified of any domestic subcontractor involved in fabrication or component/materials supply.
3. Prescribing dentist must be notified of all materials in the delivered appliance/restoration.
4. Prescribing dentist must be notified in writing that materials in the delivered appliance/restoration DO NOT contain more that very small trace amounts (less than 200 ppm) of lead or any other metal not expressly prescribed.
5. Before returning finished case to prescribing dentist, the fabricated appliance/restoration must be cleaned disinfected, and sealed in an appropriate container or plastic bag.

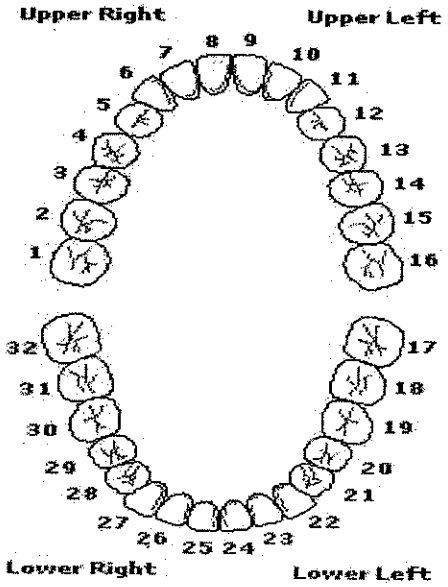
VIRGINIA BOARD OF DENTISTRY APPROVED
DENTAL LABORATORY SUBCONTRACTOR WORK ORDER FORM

This form is prescribed by the Board as required by §54.1-2719 of the **Code of Virginia** for use by dental laboratories to subcontract work orders from dentists licensed and practicing in Virginia. A dental laboratory shall provide all the information required to complete the form. A different form may be used only if all the required information on this form is collected and conveyed. A copy of the signed work order received from the prescribing dentist shall be attached.

PATIENT NAME, INITIALS or ID#: _____

Subcontractor Name: _____
Physical Address: _____
_____
E-mail Address: _____
Contact Person: _____

Contact information of the prescribing dentist:
Name: _____
Address: _____
Telephone: _____
Email Address: _____



A copy of the signed work order received from the prescribing dentist is attached.
_____Yes _____No

Additional instructions for the handling, construction or repair of the appliance:

_____
_____
_____

Contact information of person, firm or corporation issuing Subcontractor Work Order Form:

Signature: _____ Date: _____
Name Printed: _____ Telephone: _____
Address: _____
Email Address: _____

Subcontractor laboratory must comply with all items below:

1. Prior to beginning work, the prescribing dentist must be notified of any foreign subcontractor involved in fabrication or component/materials supply.
2. Prior to beginning work, the prescribing dentist must be notified of any domestic subcontractor involved in fabrication or component/materials supply.
3. Contracting laboratory must be notified of all materials in the delivered appliance/restoration.
4. Contracting laboratory must be notified in writing that materials in the delivered appliance/restoration DO NOT contain more that very small trace amounts (less than 200 ppm) of lead or any other metal not expressly prescribed.
5. Before returning finished case to prescribing dentist, the fabricated appliance/restoration must be cleaned, disinfected, and sealed in an appropriate container or plastic bag.

Virginia Board of Dentistry
September 9, 2011

Amendment of Guidance Document 60-13 Policy on Administering

An amendment is proposed on page 2 in item number 6 to add that a qualified dentist might administer conscious sedation for a dentist who is not qualified.

VIRGINIA BOARD OF DENTISTRY
Policy on Administering Schedule II through VI Controlled Substances for Analgesia, Sedation and Anesthesia in Dental Offices/Practices

Administration

1. When used in the **Regulations Governing the Practice of Dentistry and Dental Hygiene,** the terms "administration", "administer" and "administering" as defined in pertinent part in Va. Code § 54.1-3401 of the Virginia Drug Control Act, refers to the "direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient by (i) practitioner, or by his authorized agent and under his direction. . . ". The term "authorized agent", as provided for in Va. Code § 54.1-3401, means "a nurse, physician assistant or intern" consistent with Va. Code § 54.1-3408(B) and more specifically, in the context of the practice of dentistry, a dental hygienist or dental assistant (I or II) as provided for in Va. Code 54.1-3408(J).

2. In the context of the administration of a controlled substance in a dental practice, the term "under his direction and supervision" as provided for in Va. Code §§54.1-3408.B and 54.1-3408.J respectively, means that the treating dentist has examined the patient prior to the administration of the controlled substance and is present for observation, advice and control of the administration consistent with the term "direction" as defined in 18 VAC60-20-10. A qualified dentist is responsible for providing the level of observation, advice and control:
   a. appropriate to the planned level of administration (local anesthesia, inhalation analgesia, anxiolysis, conscious sedation or deep sedation/general anesthesia); and
   b. appropriate to his education, training and experience and consistent with the scope of practice of the ancillary personnel (anesthesiologist, certified registered nurse anesthetist, nurse, dental hygienist or dental assistant).

   The treating dentist may need to be physically present with the patient and the ancillary personnel to personally observe and direct actions in some instances and in others he may need to be in the office/facility and immediately available for oral communication with the ancillary personnel.

3. **LOCAL ANESTHESIA:**

   A qualified dentist may administer or use the services of the following personnel to administer local anesthesia:
   - A dentist;
   - An anesthesiologist;
   - A certified registered nurse anesthetist under his direction;
   - A dental hygienist with the training required by 18VAC60-20-81 to parenterally administer Schedule VI local anesthesia to persons age 18 or older under his direction;
   - A dental hygienist to administer Schedule VI topical oral anesthetics under his direction or under his order for such treatment under general supervision;

- A dental assistant to administer Schedule VI topical oral anesthetics under his direction; and
- A registered or licensed practical nurse to administer Schedule VI topical oral anesthetics under his direction.

4. **ANXIOLYSIS:**

a. A qualified dentist may administer or use the services of the following personnel to administer anxiolysis:
   - A dentist;
   - An anesthesiologist; and
   - A certified registered nurse anesthetist under his direction.

b. Preceding the administration of anxiolysis, a dentist may use the services of the following personnel to administer local anesthesia to numb an injection or treatment site:
   - A dental hygienist with the training required by 18VAC60-20-81 to administer Schedule VI local anesthesia to persons age 18 or older under his direction;
   - A dental hygienist to administer Schedule VI topical oral anesthetics under his direction;
   - A dental assistant to administer Schedule VI topical oral anesthetics under his direction; and
   - A registered or licensed practical nurse to administer Schedule VI topical oral anesthetics under his direction.

c. If anxiolysis is self-administered by a patient before arrival at the dental office/facility, the dentist may only use the personnel listed in 4.a. to administer local anesthesia.

5. **INHALATION ANALGESIA:**

A qualified dentist may administer or use the services of the following personnel to administer inhalation analgesia:
- A dentist;
- An anesthesiologist;
- A certified registered nurse anesthetist under his direction; and
- A dental hygienist with the training required by 18VAC60-20-81 under his direction.

6. **CONSCIOUS SEDATION:**

a. A dentist not qualified to administer conscious sedation shall only use the services of an anesthesiologist or a qualified dentist to administer conscious sedation in a dental office. In an outpatient surgery center or hospital, a dentist not qualified to administer conscious sedation shall use an anesthesiologist or a certified registered nurse anesthetist to administer conscious sedation.

b. A qualified dentist may administer or use the services of the following personnel to administer conscious sedation:
   - A dentist with the training required by 18VAC60-20-120(C) to administer by an enteral method;

- A dentist with the training required by 18VAC60-20-120(B) to administer by any method;
- An anesthesiologist; and
- A certified registered nurse anesthetist under the direction of a dentist who meets the training requirements of 18VAC60-20-120(B).

c. Preceding the administration of conscious sedation, a qualified dentist may use the services of the following personnel to administer local anesthesia to numb the injection or treatment site:
   - A dental hygienist with the training required by 18VAC60-20-81 to parenterally administer Schedule VI local anesthesia to persons age 18 or older under his direction;
   - A dental hygienist to administer Schedule VI topical oral anesthetics under his direction;
   - A dental assistant to administer Schedule VI topical oral anesthetics under his direction; and
   - A registered or licensed practical nurse to administer Schedule VI topical oral anesthetics under his direction.

7. **DEEP SEDATION/GENERAL ANESTHESIA:**
   a. A dentist not qualified to administer deep sedation/general anesthesia shall only use the services of an anesthesiologist to administer deep sedation/general anesthesia in a dental office. In an outpatient surgery center or hospital, a dentist not qualified to administer conscious sedation shall use an anesthesiologist or a certified registered nurse anesthetist to administer deep sedation/general anesthesia.
   b. A qualified dentist may administer or use the services of the following personnel to administer deep sedation/general anesthesia:
      - A dentist with the training required by 18VAC60-20-110;
      - An anesthesiologist; and
      - A certified registered nurse anesthetist under the direction of a dentist who meets the training requirements of 18VAC60-20-110.
   c. Preceding the administration of deep sedation/general anesthesia, a qualified dentist may use the services of the following personnel to administer local anesthesia to numb the injection or treatment site:
      - A dental hygienist with the training required by 18VAC60-20-81 to parenterally administer Schedule VI local anesthesia to persons age 18 or older under his direction;
      - A dental hygienist to administer Schedule VI topical oral anesthetics under his direction;
      - A dental assistant to administer Schedule VI topical oral anesthetics under his direction; and
      - A registered or licensed practical nurse to administer Schedule VI topical oral anesthetics under his direction.

Assisting in Administration

1. When used in 18VAC60-20-135 of the **Regulations Governing the Practice of Dentistry and Dental Hygiene,** the phrase "to assist in the administration" means that a qualified treating dentist, consistent with the appropriate planned level of administration (local anesthesia, inhalation analgesia, anxiolysis, conscious sedation or deep sedation/general anesthesia) and appropriate to his education, training and experience, utilizes the services of a dentist, anesthesiologist, certified registered nurse anesthetist, dental hygienist, dental assistant and/or nurse to perform functions appropriate to such practitioner's education, training and experience and consistent with that practitioner's respective scope of practice.

2. The tasks that a dental hygienist, dental assistant or a nurse might perform under direction to assist in administration are:
   - Taking and recording vital signs
   - Preparing dosages as directed by and while in the presence of the treating dentist who will administer the drugs;
   - Positioning the container of the drugs to be administered by the treating dentist in proximity to the patient;
   - Placing a topical anesthetic at an injection or treatment site preceding the administration of sedative agents as follows:
     - A dental hygienist who meets the training requirements of 18VAC60-20-81 may parenterally administer Schedule VI local anesthesia to persons age 18 or older under direction;
     - A dental hygienist may administer Schedule VI topical local anesthetics under direction;
     - A dental assistant may administer Schedule VI topical oral anesthetics under direction; and
     - A registered or licensed practical nurse may administer Schedule VI topical oral anesthetics under direction.
   - Placing a face mask for inhalation analgesia on the patient;
   - Adjusting the flow of nitrous oxide machines as directed by and while in the presence of the treating dentist who initiated the flow of inhalation analgesia; and
   - Implementing assigned duties should an emergency arise.

Monitoring a Patient

1. When used in 18VAC60-20-135 of the **Regulations Governing the Practice of Dentistry and Dental Hygiene,** the term "to assist in monitoring" means that a dental hygienist, dental assistant or nurse who is under direction is continuously in the presence of the patient in the office, operatory and recovery area (a) before administration is initiated or immediately upon arrival if the patient self-administered a sedative agent; (b) throughout the administration of drugs; (c) throughout the treatment of the patient; and (d) throughout recovery until the patient is discharged by the dentist.

2. The person monitoring the patient:
   - has the patient's entire body in sight,
   - is in close proximity so as to speak with the patient,
   - converses with the patient to assess the patient's ability to respond in order to determine the patient's level of sedation,
   - closely observes the patient for coloring, breathing, level of physical activity, facial expressions, eye movement and bodily gestures in order to immediately recognize and bring any changes in the patient's condition to the attention of the treating dentist, and
   - reads, reports and records the patient's vital signs.

Excerpts of Applicable Law, Regulations and Guidance

1. "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient by (i) a practitioner or by his authorized agent and under his direction or (ii) the patient at the direction and in the presence of the practitioner. Va. Code §54.1-3401
   - A dentist may administer drugs and devices, or he may cause them to be administered by a nurse, physician assistant or intern under his direction and supervision. Va. Code §54.1-3408(B)
   - A dentist may cause Schedule VI topical drugs to be administered under his direction and supervision by either a dental hygienist or by an authorized agent of the dentist. Va. Code §54.1-3408(J)
   - A dentist may authorize a dental hygienist under his general supervision to possess and administer topical oral fluorides, topical oral anesthetics, topical and directly applied antimicrobial agents for treatment of periodontal pocket lesions. Va. Code §54.1-3408(J)
   - Statutes regarding the practice of dentistry (Title 54.1, Chapter 27) shall not apply to a nurse practitioner licensed by the Committee of the Joint Boards of Nursing and Medicine except that intraoral procedures shall be performed only under the direct supervision of a dentist. Va. Code §54.1-2701(2)
   - A dentist may authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI local anesthesia. Va. Code §54.1-2722(D) & §54.1-3408(J)
   - To administer anxiolysis, a dentist shall have training in and knowledge of the appropriate dosages and potential complications of the medications and of the physiological effects and potential complications of nitrous oxide. Board of Dentistry Regulation 18VAC60-20-108(A)
   - To administer deep sedation/general anesthesia, a dentist shall have completed (1) one calendar year of advanced training in anesthesiology and related academic subjects or (2) an ADA approved residency in a dental specialty which includes one calendar year of full-time training in clinical anesthesia and related clinical medical subjects. Board of Dentistry Regulation 18VAC60-20-110(A)

- A dentist not qualified to administer deep sedation/general anesthesia may use the services of a qualified anesthesiologist or a qualified dentist to administer deep sedation/general anesthesia. Board of Dentistry Regulation 18VAC60-20-110(B)(1)
- A qualified dentist may use the services of a certified registered nurse anesthetist to administer deep sedation/general anesthesia. Board of Dentistry Regulation 18VAC60-20-110(B)(2)
- A dentist is automatically qualified to administer conscious sedation if he meets the requirements to adminster deep sedation/general anesthesia. Board of Dentistry Regulation 18VAC60-20-120(A)
- To administer conscious sedation by any method, shall have completed (1) training in a CODA accredited program or (2) 60 hours of acceptable continuing education plus the management of at least 20 patients consistent with ADA Guidelines. Board of Dentistry Regulation 18VAC60-20-120(B)
- A dentist who self-certified prior to January 1989 may continue to administer conscious sedation. Board of Dentistry Regulation 18VAC60-20-120(B)(2)
- To administer conscious sedation only enterally, a dentist shall have completed 18 hours of acceptable continuing education plus 20 clinically-oriented experiences. Board of Dentistry Regulation 18VAC60-20-120(C)
- A dentist must hold current certification in advanced resuscitative techniques to administer deep sedation/general anesthesia and conscious sedation. Board of Dentistry Regulation 18VAC60-20-110(A)(2) and 18VAC60-20-120(D)

2. "Anxiolysis" means the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness. Board of Dentistry Regulation 18VAC60-20-10
3. "Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands, produced by pharmacological or nonpharmacological methods, including inhalation, parenteral, transdermal or enteral, or a combination thereof. Board of Dentistry Regulation 18VAC60-20-10
4. "Deep sedation/general anesthesia" means an induced state of depressed consciousness or unconsciousness accompanied by a complete or partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to physical stimulation or verbal command and is produced by a pharmacological or nonpharmacological method, or a combination thereof. Board of Dentistry Regulation 18VAC60-20-10
5. "Direction" means the dentist examines the patient and is present for observation, advice, and control over the performance of dental services. Board of Dentistry Regulation 18VAC60-20-10
6. "Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness. Board of Dentistry Regulation 18VAC60-20-10
7. "Local anesthesia" means the loss of sensation or pain in the oral cavity or the maxillofacial or adjacent and associated structures generally produced by a topically applied or injected agent without depressing the level of consciousness.

8. The treatment team for anxiolysis shall consist of the dentist and a second person in the operatory with the patient to assist, monitor and observe the patient. If inhalation analgesia is used, monitoring shall include observing the patient's vital signs and making the proper adjustments of nitrous oxide machines at the request of or by the dentist or by a qualified dental hygienist. Board of Dentistry Regulation 18VAC60-20-108.C
9. A dentist not qualified to administer deep sedation/general anesthesia may treat patients under deep sedation/general anesthesia if a qualified anesthesiologist or a qualified dentist is responsible for the administration, Board of Dentistry Regulation 18VAC60-20-110.B(1)
10. A qualified dentist may use the services of a certified registered nurse anesthetist to administer deep sedation/general anesthesia, Board of Dentistry Regulation 18VAC60-20-110.B(2)
11. Monitoring of the patient under deep sedation/general anesthesia, including direct, visual observation is to begin prior to induction and shall take place continuously during the procedure and recovery. Monitoring shall include: recording and reporting of blood pressure, pulse, respiration and other vital signs. Board of Dentistry Regulation 18VAC60-20-110.E
12. Monitoring of the patient under conscious sedation, including direct, visual observation of the patient is to begin prior to administration, or if self-administered, when the patient arrives and shall take place continuously during the procedure and recovery. Board of Dentistry Regulation 18VAC60-20-120.F
13. Dentists who employ ancillary personnel to assist in the administration and monitoring of any form of conscious sedation or deep sedation/general anesthesia shall maintain documentation that such personnel have training in basic resuscitation techniques or responding to a clinical emergency or are an anesthesia assistant certified by the American Association of Oral and Maxillofacial Surgeons or the American Dental Society of Anesthesiology. Board of Dentistry Regulation 18VAC60-20-135.
14. Only licensed dentists shall prescribe or parenterally administer drugs or medicaments with the exception that dental hygienists with appropriate training may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older . Board of Dentistry Regulation 18VAC60-20-190
15. "Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e. intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular). Board of Dentistry Regulation 18VAC60-20-10
16. A certified registered nurse anesthetist shall practice in accordance with the functions and standards defined by the American Association of Nurse Anesthetists and .....under the medical direction and supervision of a dentist in accordance with rules and regulations promulgated by the Board of Dentistry. Board of Nursing Regulation 18VAC90-2-120(D)

Virginia Board of Dentistry
Regulatory/Legislative Committee
September 8, 2011

Recovery of Disciplinary Costs

The Committee is asked to begin discussion and development of the guidance document that will need to be in place to implement the statute and regulations which permits which allows the Board to collect costs incurred in investigating and monitoring a licensee. The goal is to have the Board adopt the guidance document at its December 2, 2011 meeting to be released concurrent with the effective date of the regulations.

Project 2178 - Proposed

BOARD OF DENTISTRY

Recovery of disciplinary costs

18VAC60-20-18. Recovery of disciplinary costs.

A. Assessment of cost for investigation of a disciplinary case.

1. In any disciplinary case in which there is a finding of a violation against a licensee or registrant, the board may assess the hourly costs relating to investigation of the case by the Enforcement Division of the Department of Health Professions and, if applicable, the costs for hiring an expert witness and reports generated by such witness.

2. The imposition of recovery costs relating to an investigation shall be included in the order from an informal or formal proceeding or part of a consent order agreed to by the parties. The schedule for payment of investigative costs imposed shall be set forth in the order.

3. At the end of each fiscal year, the board shall calculate the average hourly cost for enforcement that is chargeable to investigation of complaints filed against its regulants and shall state those costs in a guidance document to be used in imposition of recovery costs. The average hourly cost multiplied times the number of hours spent in investigating the specific case of a respondent shall be used in the imposition of recovery costs.

B. Assessment of cost for monitoring a licensee or registrant.

1. In any disciplinary case in which there is a finding of a violation against a licensee or registrant and in which terms and conditions have been imposed, the costs for monitoring of a licensee or registrant may be charged and shall be calculated based on

the specific terms and conditions and the length of time the licensee or registrant is to be monitored.

2. The imposition of recovery costs relating to monitoring for compliance shall be included in the board order from an informal or formal proceeding or part of a consent order agreed to by the parties. The schedule for payment of monitoring costs imposed shall be set forth in the order.

3. At the end of each fiscal year, the board shall calculate the average costs for monitoring of certain terms and conditions, such as acquisition of continuing education, and shall set forth those costs in a guidance document to be used in the imposition of recovery costs.

C. Total of assessment.

In accordance with § 54.1-2708.2of the Code of Virginia, the total of recovery costs for investigating and monitoring a licensee or registrant shall not exceed $5,000, but shall not include the fee for inspection of dental offices and returned checks as set forth in 18VAC60-20-30or collection costs incurred for delinquent fines and fees.

Virginia Board of Dentistry

Policy on Recovery of Disciplinary Costs

Applicable Law and Regulations

- §54.1-2708.2 of the Code of Virginia.
  The Board may recover from any licensee against whom disciplinary action has been imposed reasonable administrative costs associated with investigating and monitoring such licensee and confirming compliance with any terms and conditions imposed upon the licensee as set forth in the order imposing disciplinary action. Such recovery shall not exceed a total of $5,000. All administrative costs recovered pursuant to this section shall be paid by the licensee to the Board. Such administrative costs shall be deposited into the account of the Board and shall not constitute a fine or penalty.

- 18VAC60-20-18 of the Regulations Governing Dental Practice. The Board may assess:
  - the hourly costs to investigate the case,
  - the costs for hiring an expert witness, and
  - the costs of monitoring a licensee's compliance with the specific terms and conditions imposed

  up to $5000, consistent with the Board's published guidance document on costs. The costs being imposed on a licensee shall be included in the order agreed to by the parties or issued by the Board.

Costs

Based on the expenditures incurred in the state's fiscal year which ended on June 30, 2011, the following costs will be used to calculate the amount of funds to be specified in a board order for recovery from a licensee being disciplined by the Board:

- Investigations
  $94 per hour multiplied by the number of hours the DHP Enforcement Division reports being expended to investigate and report the case to the Board
- Monitoring for
  - Continuing education
    - For 1 to 2 courses $XX
    - For 3 or more courses $XX
  - Monetary penalty
    - For 1 payment $XX
    - For multiple payments $XX
  - Practice inspections $XX per year
  - Audit of records $XX per year
  - Practice restrictions $XX per year
  - Reporting Requirements
    - Monthly $XX
    - Quarterly $XX
    - Annually $XX

Disciplinary Cost Recovery Worsheet for July 2011 through June 2012

DHP Various Cost Per Hour FY11			Continuing Education	Monetary Penalty	Practice Inspection	Record Audits	Practice Restrictions	Reporting Requirements
Enforcement Hour	$ 94.00							
Sr. Inspectors Hour	$ 97.00							
Board Exec. Dir.	$ 115.00							
Compliance Manager	$ 92.00							
Total								
Grand Total								

UNAPPROVED - DRAFT

BOARD OF DENTISTRY
MINUTES of the NOMINATING COMMITTEE MEETING

Friday, September 17, 2010

Perimeter Center
9960 Mayland Drive, Suite 200
Richmond, VA 23233
Board Room 3

CALL TO ORDER: The meeting was called to order at 8:33 a.m.

PRESIDING: Paul N. Zimmet, D.D.S., Chair

MEMBERS PRESENT: Meera A Gokli, D.D.S.
Robert B. Hall, Jr., D.D.S

STAFF PRESENT: Sandra K. Reen, Executive Director

QUORUM: All members were present.

NOMINATIONS: Dr. Zimmet advised that nominations were needed for the offices of president, vice-president and secretary/treasurer for election during the September 17, 2010 Board meeting. Following a discussion of eligible members, Dr. Zimmet moved to nominate Ms. Pace for president, Dr. Hall for vice-president and Dr. Petticolas, D.D.S. for secretary/treasurer. The motion was seconded and carried unanimously.

ADJOURNMENT: With all business concluded, the Committee adjourned at 8:42 a.m.

Paul N. Zimmet, D.D.S., Chair	Sandra K. Reen, Executive Director
Date	Date

A

Unapproved

VIRGINIA BOARD OF DENTISTRY
MINUTES
JUNE 3, 2011

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:04 a.m. on June 3, 2011 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Jacqueline G. Pace, R.D.H., President

BOARD MEMBERS PRESENT:
Robert B. Hall, Jr. D.D.S., Vice President
Augustus A. Petticolas, Jr., . D.D.S., Secretary-Treasurer
Herbert R. Boyd, III, D.D.S.
Martha C. Cutright, D.D.S.
Meera A. Gokli, D.D.S.
Jeffrey Levin, D.D.S.
Misty Mesimer, R.D.H.
Paul N. Zimmet, D.D.S.

BOARD MEMBERS ABSENT: Myra Howard, Citizen Member

STAFF PRESENT:
Sandra K. Reen, Executive Director for the Board
Dianne L. Reynolds-Cane, M.D., DHP Director
Arne Owens, DHP Chief Deputy Director
Elaine J. Yeatts, DHP Senior Policy Analyst
Alan Heaberlin, Deputy Executive Director for the Board
Huong Vu, Administrative Assistant for the Board

OTHERS PRESENT: Howard M. Casway, Senior Assistant Attorney General

ESTABLISHMENT OF A QUORUM: With nine members of the Board present, a quorum was established.

PUBLIC COMMENT: **Melanie Bartlam, RDH,** on behalf of the Virginia Dental Hygienists' Association (VDHA), asked the Board to include the duties delegable to Dental Assistants II in the Dental Hygiene (DH) Scope of Practice. She added that for many years hygienists have been performing expanded functions across the country with training through continuing education.

Sheri Moore, RDH, asked the Board to clarify what courses would satisfy the continuing education requirement for 4

hours every 2 years for monitoring patients under anesthesia or sedation.

APPROVAL OF MINUTES:

Ms. Pace asked if the Board members had reviewed the minutes in the agenda package. Dr. Gokli requested an amendment on page 3 and Ms. Reen offered substitute language on pages 5, 8 and 9. Dr. Zimmet moved to adopt the minutes of the March 11, 2011 business meeting as amended. The motion was seconded and carried.

DHP DIRECTOR'S REPORT:

Dr. Cane reported on the following activities of DHP:

- Budget development for the FY 13 -14 biennium is underway.
- The Board of Nursing just began accepting dynamic, online applications and other boards will soon follow.
- The second National Take Back Day event was on April 30, 2011 had 120 collection sites and collected nearly double the amount of prescription drugs over the first event held in September.
- The Healthcare Workforce Data Center hosted a successful media conference in September 2010 on the physician forecast with about 20 media outlets attending. The nurse practitioners forecast is underway with the results expected to be available within six months.
- She and Mr. Owens are part of the Virginia Health Reform Initiative which has presented recommendations to the Governor for implementing health reform in Virginia.
- The Lyme Disease Taskforce will be meeting toward the end of June 2011.

VCU SCHOOL OF DENTISTRY :

David C. Sarrett, D.M.D., M.S., Dean – Dr. Sarrett thanked the Board for the opportunity to provide an update on the school then gave a presentation addressing:

- Priorities for the new dean;
- The current state of the School of Dentistry;
- Student breakdown;
- VCU and National applications for dental school;
- FY10 budget;
- VCU ranking with In-State Tuition & Fee increase;
- Search for Director of Philips Research Institute and Chair of the Department of Oral & Craniofacial Molecular Biology;
- Clinical Departments- research strengths;
- National Institutes Heath (NIH) Ranking;

- Strategic faculty growth & development plan for next 10 years; and
- New faculty appointments

Dr. Sarrett added that he is working with the Virginia Dental Association on introducing a bill in the 2012 Session of the General Assembly to amend licensure provisions for dental school faculty.

Dr. Sarrett stated that the school is addressing liability questions about hosting and participating in live patient examinations at the school. He said he hopes that dentistry moves quickly away from such exams.

REPORTS:

Board of Health Professions (BHP). Dr. Zimmet reported the Board received an update on implementation activities of the Sanction Reference Points and decided to offer CE courses for lawyers and other interested members of the public.

AADB. Dr. Levin said that he attended the AADB Mid-Year meeting in Chicago in April 2011. He then reported that:

- Work continues on consolidating the parts of the National Board exam;
- He did request consideration of one vote per state which he learned would have to be advanced by the Executive Committee before it could be brought to the membership; and
- State Boards are advised to work through dental associations and peer pressure in regard to addressing advertising concerns.

SRTA. Dr. Gokli reported that:

- Record numbers of applicants took the 2011 SRTA exams;
- SRTA gave 17 dental exams, 19 dental hygiene exams, and 2000 computer simulations;
- SRTA is operating in the black ; and
- SRTA's Bylaws were amended to allow the Board of Director's to dismiss a SRTA member who has been sanctioned by a state board.

Ms. Pace stated there is nothing new to report on the dental hygiene exam.

Regulatory/Legislative Committee. Dr. Boyd reported that the Committee met on April 22, 2011and the materials are presented later in the agenda for discussion and action.

LEGISLATION AND REGULATION:

Review of Regulatory Action. Ms. Yeatts reported that the:

- Periodic Review and reorganization of the regulations - will be presented to the Board for adoption later in the agenda;
- Recovery of Disciplinary Costs regs – are in final stage and are at Secretary's Office for approval;
- Registration of Mobile Clinics – are in final stage and are at Secretary's Office for approval;
- Training in pulp capping for dental assistants II – is at Secretary's Office for approval; and
- Board-approved courses for radiation certification – was amended at the March 11, 2011 meeting to strike 18VAC60-20-195(A) (iii) and it went into effect on May 11, 2011.

Registration of Sedation/Anesthesia Permits. Ms. Yeatts stated that the bill was passed by both houses of the 2011 General Assembly. Staff will have the regs prepared for consideration at the September business meeting.

Fast Track Regulation on Radiation Certification. Ms. Yeatts stated further work on the radiation certification regulation, 18VAC60-20-195, was needed following the Board's March 11, 2011 action. She presented a proposal to clarify in (i) that a radiation safety course and examination given by a CODA accredited program is not required to be recognized by CODA and in (iii) to name the DANB sponsored course and examination that is accepted.

Following discussion, (i) was further amended to read " *satisfactory completion of a radiation safety course and examination given by an institution that maintains a program in dental assisting, dental hygiene or dentistry accredited by the Commission on Dental Accreditation of the American Dental Association,…"*

Dr. Zimmet moved to accept the amended fast-track regulation. The motion was seconded and passed.

Guidance Doc on Radiation Certification. Ms. Yeatts asked the Board to adopt the proposed guidance document which clarifies (i) in 18VAC60-20-195 pending the changes in the regulation just adopted. She advised this guidance is needed to assure CODA accredited programs that they may offer the training.

Dr. Levin moved to adopt the Guidance Document as proposed. The motion was seconded and passed.

Adoption of Proposed Draft of Discipline Chapter. Ms. Yeatts reviewed the content of the chapter. Dr. Zimmet moved to adopt the proposed draft. The motion was seconded and passed.

Adoption of Proposed Draft of Dental Assistants II Chapter. Ms. Yeatts noted that the radiation certification language in this draft will be replaced with the language the Board adopted earlier. Dr. Levin moved to adopt the proposed draft. The motion was seconded and passed.

Adoption of Proposed Draft of Dental Hygiene Chapter. After discussion, the Board made the following changes to the draft:
8VAC60-25-20.B – delete "**a current, active**" before "license"
18VAC60-25-80 - replace with the radiation certification language the Board adopted earlier
18VAC60-25-190.B(5) – replace with "*A provider accredited by the Accreditation Council for Continuing Medical Education for Category 1 credits.*"
Dr. Zimmet moved to adopt the proposed draft as amended. The motion was seconded and passed.

Adoption of Proposed Draft of Dental Practice Chapter. After discussion the Board made the following changes to the draft:
18VAC60-21-30.B - delete "**a current, active**" before "license"
18VAC60-21-170 - replace with the radiation certification language the Board adopted earlier
18VAC60-21-210.B(4) – written as "*Have been in continuous clinical practice in another jurisdiction of the United States or in United States federal civil or military service for five out of the six years immediately preceding application for licensure pursuant to this section. Active patient care in another jurisdiction of the United States as a volunteer in a public health clinic or as an intern or residency program may be accepted by the board to satisfy this requirement. One year of clinical practice shall consist of a minimum of 600 hours of practice in a calendar year as attested by the applicant*"
18VAC60-21-250.C(5) – replace with "*A provider accredited by the Accreditation Council for Continuing Medical Education for Category 1 credits;*"
8VAC60-21-280 .B – Make the last sentence in section B.3 the new section B to read "No sedating medication shall be

prescribed for or administered to a child age 12 and under prior to his arrival at the dentist office or treatment facility." 8VAC60-21-280 .C – Keep "pulse oximeter" as required equipment.

Dr. Zimmet moved to adopt the proposed draft with the recommended changes. The motion passed with seven members voting in favor – Dr. Cutright, Dr. Gokli, Dr. Hall, Dr. Levin, Ms. Mesimer, Ms. Pace and Dr. Zimmet and two members voting against – Dr. Boyd and Dr. Petticolas.

Minimum Sedation Reference. Ms. Reen stated that this was provided as a resource for discussion of 18VAC-60-21-280.

BOARD DISCUSSION/ACTION:

Public Comment Topics. Ms. Pace stated that discussion of the public comment received will be deferred until the proposed regs have completed the public comment period and are back before the Board for discussion.

Letter from Raymond F. Gist, ADA President. Ms. Reen stated that the Board does accept continuing medical education courses. She noted that there is another letter from Dr. Gist which presents the ADA's adopted policy opposing the examination of dental and allied dental licensure candidates together. Ms. Reen added that a letter from Dr. Brian Kennedy, ADA Chair of the Council on Dental Education and Licensure, urges implementation of specialty licensure.

Paperless Licensing. Mr. Heaberlin stated that he is participating on an agency committee to make recommendations for a paperless licensing process. He added that Dr. Cane and Ms. Pace encouraged Dentistry's participation with the Board of Nursing in the development of a pilot project for DHP. He added that the recommendations include issuing a license one time, without a listed expiration date, and eliminating the wallet certificate. He noted that it was decided to address the paper license and the wall certificate separately since Dentistry and other boards require licenses to be displayed.

2012 Legislative Proposals. Dr. Petticolas asked the Board to consider adoption of legislation to amend section 54.1-2709 of the Code to allow a licensee the option of obtaining a restricted volunteer license in lieu of renewing an unrestricted dental license. Ms. Yeatts offered a substitute proposal to amend sections 54.1-2712.1 and 54.1-2726.1 to permit someone with a current, unrestricted license to apply

for a restricted volunteer license. Following discussion, Ms. Reen recommended that further work was needed and Ms. Pace assigned the topic to the Regulatory/Legislative Committee.

Definition of Dental Hygiene. Ms. Pace stated that the current definition of dental hygiene is out of date and should be amended to describe all the duties that a hygienist is trained and qualified to perform. Following discussion, Ms. Pace assigned this topic to the Regulatory/Legislative Committee to develop a proposal.

Virginia Dental Law Exam. Mr. Heaberlin stated that staff reviewed the dental law exam and is working with PSI on edits to bring the exam into compliance with the regulations promulgated on March 2, 2011.

Petitions for Rulemaking to Amend 18VAC60-20-195. Ms. Reen stated that she will use the Guidance Document on Radiation Certification the Board adopted to respond to the three petitions.

Alternative Strategies for Licensing Exams. Dr. Levin asked the Board to work on identifying alternatives to requiring live patient exams for licensure. Following discussion, Ms. Pace assigned the subject to the Exam Committee.

REPORT ON CASE ACTIVITY:

Mr. Heaberlin reported that in the third quarter the Board received a total of 116 cases and closed a total of 112 for an overall 96.5% clearance rate. He added, however, that 96 patient care cases were received and only 62 were closed resulting in a 65% clearance rate which is well below the key performance measure of 100%. He added that the Board is still meeting the key performance measures by having only 9% of cases over 250 business days and by closing 90% of cases within 250 business days.

He added that the Board currently has 204 open cases of which 52 cases are in probable cause with 21 at Board member review. He reminded Board members who have cases for probable cause review to please complete them and return them back to staff as soon as possible.

EXECUTIVE DIRECTOR'S REPORT/BUSINESS: Ms. Reen reported the following:

- The proposed calendar for 2012 is offered for adoption. She noted that all Board members had an opportunity to note conflicts and no changes were requested. Dr. Gokli moved to adopt the 2012 calendar. The motion was seconded and passed.

- Dr. Zimmet's replacement will be Dr. Surya P. Dhakar and we are still waiting for a decision on Ms. Howard's seat.

- The Board's financial position is still healthy, but the current projection is the Board may need to consider a fee increase in fiscal year 2013-2014. She added that she is working on the 2013-2014 biennial budget and the Board is not in need of extra money at the present time.

BOARD COUNSEL REPORT: Mr. Casway said he has nothing to report.

ADJOURNMENT: With all business concluded, the meeting was adjourned at 1:10 p.m.

Jacqueline G. Pace, R.D.H., President	Sandra K. Reen, Executive Director
Date	Date

UNAPPROVED DRAFT

VIRGINIA BOARD OF DENTISTRY

MINUTES
SPECIAL SESSION – TELEPHONE CONFERENCE CALL

CALL TO ORDER: The meeting of the Board of Dentistry was called to order at 5:02 p.m., on June 14, 2011, in Hearing Room 2, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, VA 23233.

PRESIDING: Jacqueline G. Pace, RDH.

MEMBERS PRESENT:
Herbert R. Boyd, III, D.D.S..
Robert B. Hall, Jr., D.D.S.
Paul N. Zimmet, D.D.S.
Meera A. Gokli, DDS
Misty Mesimer, R.D.H.

MEMBERS ABSENT:
Augustus A. Petticolas, D.D.S
Jeffrey Levin, D.D.S.
Martha C. Cutright, D.D.S.
Myra Howard

QUORUM: With 6 members present, a quorum was established.

STAFF PRESENT:
Sandra K. Reen, Executive Director
Alan Heaberlin, Deputy Executive Director
Tammie Jones, Adjudication Specialist
Lorraine McGehee, Deputy Director, Administrative Proceedings Division

OTHERS PRESENT:
Howard Casway, Senior Assistant Attorney General
Wayne Halbleib, Senior Assistant Attorney General

Claude V. Camden,Jr, DDS
CASE No.: 138151

The Board received information from Mr. Halbleib in order to determine if Dr. Camden's impairment from mental illness and substance abuse constitutes a substantial danger to public health and safety. Mr. Halbleib reviewed the case and responded to questions.

DECISION:

Dr. Zimmet moved that the Board Summarily Suspend Dr. Camden's license to practice dentistry in that he is unable to practice dentistry safely due to impairment resulting from mental illness and substance abuse. Following a second and discussion, a roll call vote was taken. The motion passed 6 to 0. Mr. Casway suggested to the Board that it may want to consider offering a Consent Order to Dr. Camden. Dr. Zimmet moved that the Board offer a Consent Order to Dr. Camden that will put his license on Suspension Indefinitely but said suspension shall be stayed with Dr. Camden's full participation and compliance with the Health Practitioner's Monitoring Program. Following a second and discussion, a roll call vote was taken. The motion passed with a 6 to 0 vote.

ADJOURNMENT: With all business concluded, the Board adjourned at 5:23 p.m.

Jacqueline G. Pace RDH, President	Sandra K. Reen, Executive Director
Date	Date

UNAPPROVED DRAFT

BOARD OF DENTISTRY

MINUTES OF EXAMINATION COMMITTEE

TIME AND PLACE:	The Examination Committee convened on August 18, 2011 at 3:35 p.m., at the Department of Health Professions, Perimeter Center, 2nd Floor Conference Center, 9960 Mayland Drive, Henrico, VA 23233.
PRESIDING:	Martha C. Cutright, D.D.S.
MEMBERS PRESENT:	Jeffrey Levin, D.D.S. Jacqueline G. Pace, R.D.H., President, Board of Dentistry Augustus A. Petticolas, Jr., D.D.S.
STAFF PRESENT:	Sandra K. Reen, Executive Director Donna Lee, Discipline Case Manager
OTHERS PRESENT:	Carol Moore-Mooso, Test Development Specialist, PSI Services, LLC.
QUORUM:	All members of the Committee were present.
APPROVAL OF MINUTES:	Dr. Cutright asked if the Committee members had reviewed the September 11, 2008 minutes. Dr. Petticolas moved to accept the minutes of September 11, 2008. The motion was seconded and passed.
PUBLIC COMMENT:	No public comments were received.
REVIEW OF TEST ITEMS FOR THE VIRGINIA DENTAL LAW EXAM:	Dr. Levin moved that the Examination Committee convene a closed meeting pursuant to § 2.2-3711(A)(11) and § 2.2-3712(F) of the Code of Virginia for the purpose of revising questions and answers in the Virginia Dental Law Exam. Additionally, Dr. Levin moved that Ms. Reen, Ms. Lee and Ms. Moore-Moosa attend the closed meeting because their presence in the closed meeting is deemed necessary and their presence will aid the Committee in its deliberations. The motion was seconded and passed.
Reconvene:	Dr. Levin moved that the Committee certify that it heard, discussed or considered only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion by which the closed meeting was convened. The motion was seconded and passed.

Dr. Cutright reported that Ms. Reen will relay the review results to PSI.

Ms. Reen provided the Committee with statistical data regarding Virginia Dental Law Exam test results from September 2010 through June 2011. She informed the Committee that the contract with PSI will expire at the end of 2012. The Board will be able to choose from multiple vendors. Once a vendor is chosen, the Board will have an opportunity to re-word questions, add additional questions to reflect the changes in the Board of Dentistry Regulations, Dental Hygiene Regulations, and add questions pertaining to Dental Assistant II Regulations.

The Examination Committee will plan a future meeting before or after a scheduled Special Conference Committee meeting to discuss possible changes or improvements to the law exam.

ADJOURNMENT: With all business concluded, the Committee adjourned at 5:15 p.m.

Martha C. Cutright, D.D.S, Chair

Sandra K. Reen, Executive Director

Date

Date

UNAPPROVED DRAFT

BOARD OF DENTISTRY

MINUTES OF EXAMINATION COMMITTEE

ADVISORY FORUM ON ALTERNATIVES TO USING HUMAN SUBJECTS IN CLINICAL EXAMINATIONS

TIME AND PLACE: The Examination Committee convened on August 19, 2011 at 1:40 p.m., at the Department of Health Professions, Perimeter Center, 2nd Floor Conference Center, 9960 Mayland Drive, Henrico, VA 23233.

PRESIDING: Martha C. Cutright, D.D.S.

MEMBERS PRESENT: Herbert R. Boyd, III, D.D.S.
Jeffrey Levin, D.D.S.
Jacqueline G. Pace, R.D.H., President, Board of Dentistry
Augustus A. Petticolas, Jr., D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director
Donna Lee, Discipline Case Manager

OTHERS PRESENT: Richard Archer, D.D.S., VCU School of Dentistry
Michael Dishman, D.D.S., VCU School of Dentistry
Sheri Moore, R.D.H., Virginia Dental Hygienists Association
Tammy Swecker, R.D.H., VCU School of Dentistry
Terry Dickinson, D.D.S., Virginia Dental Association
James D. Watkins, D.D.S., SRTA Dental Exam Committee
Paul Wiley, D.D.S., VCU School of Dentistry

QUORUM: All members of the Committee were present.

CALL TO ORDER: Dr. Cutright stated that the purpose of the meeting was to receive comments from the dentistry community regarding the advantages and disadvantages of possible future policy changes for accepting alternatives to live patient clinical examinations.

Dr. Levin informed the Committee that he would participate in discussions of this subject, but would recuse himself from voting on a decision since he has multiple interests in this matter.

Ms. Moore stated that dental hygienists are in favor of using live patients.

Dr. Wiley stated that the SRTA exam will be given at Virginia Commonwealth University in 2012 and that only one component of the exam still uses live patients. Two other components use manikins and there is also a computer based exam. He noted the following concerns:
(1) There is no science which supports the validity of human subject exams as providing a true measure of a student's skills;
(2) The high potential of patient abuse particularly as treatment standards change such as attempting re-mineralization of caries;
(3) Preparation for the exam disrupts a student's attention to the curriculum; and
(4) Liability issues arise when something bad happens to a patient and it is not clear who is responsible.

Ms. Pace expressed concerns about whether a non-live patient exam would protect the public. Dr. Wiley responded that there should be an independent examination of a student but that the current exams do not always show the skill set of the student. He further stated that some states do use post-graduate programs or internships.

Dr. Levin, an examiner for five years, stated that SRTA spends a lot of time to better the exam each year and safeguards are put in place to not bias the program, but during exams issues arise on the floor and ethics go out the window. Manikins have become much more sophisticated. He added that some patients become professional patients and will blackmail students to show up for clinical tests. Dr. Levin also said the Board needs a better option for licensing specialists.

Ms. Swecker stated that students devote a lot of time to find the perfect patient. She stated that some ethical questions arise because students may hold patients for clinicals when, in fact, prompt treatment is needed; and some patients will not come for follow-up visits. Ms. Swecker added that the portfolio exam model addresses many more aspects of being a dentist and she spoke to the importance of self assessment.

Dr. Archer stated that simulation with manikin teeth has worked really well in third party testing. He added that important skills such as patient evaluation and management are not currently being tested and that typodonts with calculus are now available.

Ms. Pace commented that it was important for the Board to provide a level playing field and to evaluate competence on a range of experiences in order to protect the public.

Dr. Dickinson, an examiner for eight years, stated that he believes dentistry is in a new era where the schools and the education process are much more competent. He said testing decision making is critical and may be more important than testing technical skills. He added that students should demonstrate the ability to make ethical decisions.

Dr. Watkins, an examiner since 1989, stated that exams have gotten easier but the failure rates remain about the same indicating that stress is a significant factor. Dr. Watkins suggested consideration of using an independent entity to administer a portfolio model at the school. He also supported establishing a regulation for specialty licensure.

Dr. Dishman stated that students are tested with patients every day at school and that the faculty through its review and discussion process is the best judge of who will be a good dentist. He stated that students are routinely evaluated by faculty members. Dr. Dishman stated that an external organization can counterbalance what is going on in the schools without the angst of paperwork and finding the right patient.

Dr. Archer commented that the computer part of the current exam is difficult and he thinks treatment planning should be tested.

Dr. Levin suggested having seniors present a case to a committee of the Board where the student and patient could be questioned.

Dr. Watkins commented that mobility needs to be considered.

Dr. Boyd stated that most complaints involving disciplinary cases are as a result of a bad decision so evaluating decision making ability is important. Dr. Boyd encouraged the Committee to find an exam model that will test a student's decision making process like the Canadian test.

There was a discussion of using the term "entry level competence" instead of "minimum competence" in which Ms. Reen advised that the Board's responsibility is to establish the minimum standard for licensure whether the person is newly licensed or has practiced for years.

NEXT STEPS:

Dr. Cutright asked for suggestions on the steps the Board should take to develop a proposal for the Board. There was an agreement that the participants would continue to advise the Committee. Dr. Wiley suggested that an independent agency be asked to review the various programs and develop a model program.

Dr. Levin asked that the Committee have a presentation on the Canadian and Minnesota OSCE model and stated that Dr. Jim Burns could arrange for the program director in Canada to present.

Dr. Dickinson suggested that representatives of the California and New York programs should also be invited.

Ms. Reen stated that the Exam Committee will report to the Board at its September meeting that there was a consensus of the participants of the Advisory Forum to continue to explore this subject. She recommended that any presentations on models be made to the entire Board. She also explained that funding travel for presenters will require approval by the Secretary of Health and Human Resources and is questionable so an option may be to utilize teleconferencing. Ms. Reen asked that contact information on potential speakers be sent to her so she might extend the invitations and address logistics.

Dr. Cutright stated that the Exam Committee will make arrangements for speakers to address the Board and everyone will be kept informed of the Board's progress in this matter. The Exam Committee's next meeting will be September 9, 2011 following the Board business meeting.

ADJOURNMENT: With all business concluded, the Committee adjourned at 3:54 p.m.

Martha C. Cutright, D.D.S, Chair

Sandra K. Reen, Executive Director

Date

Date

Virginia Board of Dentistry
September 9, 2011

NERB Information on Score Reports

At its June 3, 2011 meeting, the Board requested that the executive director request an update from NERB on its actions to address the reporting errors made regarding the candidates who took the Florida Dental Examination for the December meeting.

NORTH EAST REGIONAL BOARD OF DENTAL EXAMINERS, INC.
8484 Georgia Avenue, Suite 900 • Silver Spring, MD 20910
Tel: (301) 563-3300 • Fax: (301) 563-3307
www.nerb.org

July 27, 2011

Ms. Sandra Reen
Executive Director
Virginia State Board of Dentistry
9960 Mayland Drive, Suite 300
Henrico, VA 23233-1463

Re: NERB Status

Dear Ms. Reen:

I appreciate the candid discussion we had a few weeks ago about the concept of "NERB Status" and the subsequent difficulties it has created for all of us. As you requested, this letter will outline the background of NERB Status, and will recap the issues we uncovered last fall.

Efforts Toward a Uniform National Examination

For a number of years many of us involved in dental testing have thought that it would be beneficial to dental candidates if there were one uniform national dental licensing examination. In fact, the goal of a national exam was one of the factors that lead the NERB in 2005 to transfer what was then its proprietary clinical examination to the newly formed American Board of Dental Examiners (ADEX). We recognized that for a licensure clinical examination to gain wider recognition—and possibly be adopted by multiple testing organizations other than the NERB—the examination needed to be owned and developed by a neutral organization. That thinking lead to the founding of ADEX and the NERB adopting the ADEX examination.

The Purpose of NERB Status

This was also the foundation of the NERB Steering Committee's actions at its October 31, 2008 meeting, when the Committee adopted a resolution providing that candidates who passed other licensing examinations that were determined by expert opinion to be psychometrically equivalent to the ADEX exam would be given "NERB Status." This resolution envisioned a formal process for recognizing that equivalency.

The clear intention of the Steering Committee's resolution was that a candidate, using a professional opinion that a non-ADEX exam was the psychometric equivalent to the ADEX exam, might allow a particular dental board to recognize the non-ADEX/NERB exam. For example, if the restorative section of the SRTA exam were determined to be psychometrically equivalent to the ADEX exam, the candidate could argue that she or he should not be required to re-take the restorative section of the ADEX exam in order to

qualify for a license in a state that recognized the ADEX exam. It seemed unnecessary to us that a candidate should have to go to the trouble and expense to be re-tested on a skill set for which the candidate had already demonstrated proficiency.

I think it's worth pointing out that the goals of a uniform national examination, portability of credentials, and the recognition of other, psychometrically equivalent exams did not necessarily benefit NERB. Each ADEX exam a candidate did not need to take because of a national exam or NERB Status represented lost revenue to the NERB.

Errors in the Implementation of NERB Status

Unfortunately, as you know, our goals for NERB Status did not translate correctly into practice. The NERB executive responsible for this program instructed the staff to issue to the 220 or so NERB Status candidates certificates and paper score reports stating that they had taken the *NERB/ADEX* exam, not the *Florida* examination they actually took. Worst of all, this same former executive instructed the NERB IT staff to modify the NERB databases to show the score results for the NERB Status candidates as them having taken the NERB/ADEX exam, not the Florida exam they actually too.

Steps Taken to Correct the NERB Status Errors and Prevent Future Errors

As you know, this former executive is no longer employed by the NERB, nor does he have any other affiliation with the organization. The actions of this former employee were taken without any knowledge of the NERB Board or volunteer leadership. Most important of all, the NERB has undertaken a number of organizational and management changes that ensure that this kind of misconduct cannot happen again.

Since we uncovered this problem late last October, we have notified all of the dental boards, including the Virginia board. We have also notified all of the NERB Status candidates, and have completely corrected our procedures for reporting exam results to ensure complete accuracy.

Many state dental boards have wrestled with the question of whether to accept the psychometric equivalency of the Florida and ADEX examinations for the NERB Status candidates. In almost every instance, the boards have determined not to sanction the candidates for the wrongdoing by a former employee of the NERB. Some of these boards have also apparently concluded that the communications by the NERB to the NERB Status candidates were so confusing that the candidates—not being lawyers, of course---could have fairly believed that they were acting properly in submitting the licensing applications they did.

Florida's Adoption of the ADEX Examination

You may also be aware that during its last legislative session, the Florida General Assembly unanimously enacted a statute that formally adopts the ADEX exam as the licensing exam for Florida and requires the Florida Dental Board to recognize the ADEX examination administered in other states. This new law effectively acknowledges that the ADEX and the prior Florida exams were the same, and that it is more beneficial to candidates for there to be one exam. Of course, now that Florida will be using the ADEX exam, there is no possibility of future confusion like what has recently transpired.

Continued Recognition of the ADEX/NERB Examination

Finally, I want to address the possibility that, because of the problems with NERB Status, the Board may choose to no longer recognize the NERB examination. We believe that such an action---while understandable, in light of these recent problems---would mainly impair the interests of the candidates and the State of Virginia. The NERB examination is accepted as the basis for licensure in approximately 40 states, and each year the NERB tests roughly one-third of all dental candidates in the U.S. As a result, not recognizing the NERB exam would place Virginia in a small minority of states and, most importantly, would significantly limit the pool of candidates and licensed dentists seeking to practice in Virginia. The corollary would be true too: over time, fewer Virginia dentists would have credentials that would be portable to other states.

This has been a difficult and painful experience for the NERB, and we are acutely aware of the problems it has caused for your board and the NERB Status candidates who have obtained licenses in Virginia. I, along with any other NERB representatives you think appropriate, would be pleased to appear before the Board to explain all of this in more detail, and to answer any questions the Board might have.
I appreciate the opportunity to provide you and the Board with this background information.

Sincerely,

Guy Shampaine

Guy Shampaine, D.D.S.
Chairman
North East Regional Board of Dental Examiners, Inc.

NORTH EAST REGIONAL BOARD OF DENTAL EXAMINERS, INC.
8484 Georgia Avenue, Suite 900 • Silver Spring, MD 20910
Tel: (301) 563-3300 • Fax: (301) 563-3307
www.nerb.org

August 1, 2011

Ms. Sandra Reen
Executive Director
Virginia State Board of Dentistry
9960 Mayland Drive, Suite 300
Henrico, VA 23233-1463

Re: NERB Status

Dear Ms. Reen:

Thank you for your letter of today.

I apologize for omitting one of the most important steps the NERB has taken to correct its errors regarding NERB Status, namely permitting NERB Status candidates to take the NERB examination at no charge. Thank you for reminding me of that part of our conversation.

Back in the spring of this year the NERB informed each of the 220 NERB Status candidates that he or she could take the NERB examination before August 31, 2012 at no charge, at any regularly scheduled NERB examination. To date we have only had one NERB Status candidate accept this offer, and that candidate will be taking the exam this coming weekend at Boston University. The policy of offering NERB examinations without charge remains in effect until August 31, 2012. The NERB will continue to work diligently to resolve all remaining issues.

If you have any other questions or concerns, please do not hesitate to contact me.

Thank you again.

Sincerely,

Guy Shampaine

Guy Shampaine, D.D.S.
Chairman

American Association of Dental Boards

August 10, 2011

TO: Presidents/Chairmen, State Dental Boards
Presidents/Chairmen, Specialty Boards
Presidents/Chairmen, Specialty Associations
President , American Dental Association
President, American Dental Education Association
President, American Student Dental Association
President, American Dental Hygienists' Association

FROM: American Association of Dental Board Attorneys Roundtable Co-Chairs
(Angela Dougherty and Darlene Ratliff-Thomas)

SUBJECT: Proposed Advertising Guidelines and Request for Comments

The attached proposed guidelines are a compilation of the efforts of multiple attorneys within the AADB Attorneys Roundtable and contain substantial revisions in order to help protect the public from misleading and deceptive advertising, while keeping in mind that recent court decisions have resulted in adverse decisions to licensing boards. Specifically, courts in both Florida and California have held that regulatory provisions which restrict specialty advertising are unconstitutional. All communities of interest will recognize that the attached final draft emanates, in large part, from the ADA Principle of Ethics and Code of Professional Conduct, Section 5. However, substantial revisions are proposed to strike a balance between the objective of protecting patients from misleading ads while at the same time giving deference to the courts' rationale when evaluating the constitutionality of regulatory provisions which govern advertising.

The attached guidelines serve as a model which may be adopted by governing entities, in whole, or in part. Constitutional challenge of these provisions, or any advertising regulations, is likely inevitable, and while these guidelines do not ensure regulatory entities will prevail in defense thereof, they more closely comport with recent court decisions than many current restrictions on specialty advertising. To assist the communities in understanding the courts' rationale, additional background is set forth below.

Significant Legal Developments and Modifications to "Specialty" Advertising: The outcome of recent litigation in both Florida and California, which was initiated by the American Academy of Implant Dentistry (AAID), suggests that restrictions on advertising may fail judicial scrutiny when First Amendment Constitutional challenges to those restrictions occur. Cases in both of those states remain persuasive precedent for other organizations outside of Florida and California, as both decisions are "local" decisions and appeals in the cases were never fully exhausted. However, the rationale set forth in both decisions, may be compelling to other judges reviewing similar challenges, and accordingly serve as background for proposed modifications with respect to non-specialty advertising contained in the proposed guidelines.

Florida: A Florida circuit court held that the State Board of Dental Examiner's regulatory provision, which required a disclaimer, was unconstitutional and awarded the Plaintiff dentist challenging the provision a $725,000 judgment in legal expenses he accrued to fight the regulatory provision. *DuCoin v. Dr. Ana M. Viamonte Ros* (Florida Board of Dentistry), In the Circuit Court of the Second Judicial Circuit, In and for Leon

County, Florida Case No. 2003 CA 696 (2009). In the *DuCoin* case, the provision at issue, which parallels a similar provision currently contained in the ADA Principle of Ethics and Code of Professional Conduct, required any dentist using the AAID credential to affirmatively disclose that 1) The name of the area of practice was not recognized as a specialty area by the ADA or the Florida Board of Dentistry or 2) That the name of the referenced organization was not recognized as a bona fide specialty area by the American Dental Association or the Florida Board of Dentistry.

California: In California, the United States District Court for the Eastern District of California recently held unconstitutional similar provisions which prohibited advertising of credentials and specialties in non-ADA accredited areas and referenced the Florida *DuCoin* case as particularly relevant and compelling. *Potts v. Stiger*, 2010 [which is the successor case on remand of *Potts v. Hamilton*, 334 F. Supp. 2d 1206, 1208 (E.D. Cal. 2004)]. The recent 2010 decision in the *Potts* case is a progeny of its predecessor involving the same plaintiff who prevailed, again with the assistance of the American Academy of Implant Dentistry, at the District Court level in a 2004 challenge to restrictions prohibiting advertising of non-recognized specialties. The case was appealed to the 9th Circuit and remanded back to the District Court on narrow issues.

In 2004, the Court initially held:

> This case is a further chapter in the long-running dispute between plaintiffs and the State of California over the State's prohibitions upon the advertising of dental specialty credentials. Plaintiffs challenge a recently enacted California statute restricting the advertising of dental specialty credentials to those credentials recognized by the American Dental Association ("ADA") or the Dental Board of California ("Dental Board"). The court previously found that an earlier version of this statute violated the protection afforded to commercial speech by the First Amendment. *See Bingham v. Hamilton,* 100 F.Supp.2d 1233 (E.D.Cal.2000). This renewed effort to limit the advertising of bona fide credentials fares no better. The advertising of credentials in dental specialties awarded by boards not recognized by the ADA or the Dental Board is not inherently or actually misleading. In addition, even if such advertising were potentially misleading, the statute is more restrictive than necessary to advance the State's interest in preventing false or misleading advertising of dental specialty credentials. Therefore, the statute violates the First Amendment, and plaintiffs are entitled to summary judgment.

Id. The subsequent *Potts* decision, issued and transcribed by the U.S. District Court on October 15, 2010, affirmed its earlier decision and specifically incorporated the rational of its predecessor judge in the 2004 case as well as the holdings of the *DuCoin* decision in Florida. However, unlike the Florida court, the California court gave modest recognition to survey evidence regarding the public's understanding of ADA accreditation, and further suggested that disclaimers, with respect to the non-specialty areas, may more appropriately meet the requirement that advertising regulations be narrowly tailored to serve the State's interest in preventing false or misleading advertising of credentials.

Specifically, in order to withstand First Amendment constitutional scrutiny, advertising restrictions must meet each prong of the test promulgated by the United States Supreme Court in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 at 566, 100 S.CT 2343, 65 L.Ed.2d. 341 (1980):

1. The State has a substantial government interest (in preventing misleading advertising).
2. The regulation must directly and materially advance the substantial interest.
3. The regulation cannot be more extensive than is necessary to serve the government's (substantial) interest.

Conclusion: The recent California decision, as well as other decisions which address advertising regulatory provisions within other professions, suggest that courts favor Boards requiring disclaimers in advertising as an alternative to restricting content. (See *Borgner* at 1213-1214 and *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 648-649, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985). That said, flawed survey methodologies may do more harm than good. Accordingly, the proposed guidelines, with respect to non-specialty advertising, are an attempt to satisfy judicial preference for disclaimers over restrictions and reconcile both the Florida and

California opinions. They afford the regulatory entity discretion in evaluating whether an ad, for a non-recognized specialty is, in fact, deceptive, after discerning whether the ad fully discloses the training of the dentist using a credential or asserting specialization.

Instead of compelling specific disclaimer language which the Florida court found unconstitutional, the proposed disclaimer language, with respect to non-recognized specialties, while discretionary on the dentist's part, provides factors for regulatory bodies to consider when determining whether the advertising fully apprizes a patient of the dentist's skills which are asserted in the ad. Therefore, such factors serve as a framework for analysis, not necessarily requirements in advertising; as such, they afford the regulatory body a better defense to constitutional challenges that the objective assessment factors are more narrowly tailored than the "required disclaimers" (which were stricken by the Florida court). That is, the modified provisions identify specific information any regulatory entity may deem relevant for the public to possess before a patient is capable of making an informed decision regarding the actual training and quality of the program that precedes a credential or asserted specialty from the dentist the patient is selecting. Such information may include requiring a dentist using a non-recognized specialty credential to disclose whether or not the program/credential is recognized by ADA versus requiring the dentist to use specific language noting non-recognition (by ADA). Such a distinction is a narrow one, and like the Florida disclaimer, may be successfully challenged; however, to the degree the California court gave modest credence to the survey evidence obtained from the public regarding its understanding of ADA accreditation, such a discretionary disclaimer allows each regulatory entity considering it, the ability to determine which accrediting and training information is relevant in each state.

Comments on the draft document should be submitted to Angela Dougherty, Esq. lawacd@gmail.com no later than September 1, 2011. It is anticipated that the BAR will forward the final document to the 2011 AADB General Assembly at the 128th AADB Annual Meeting, October 9-10, 2011, Mandalay Bay Resort and Casino, Las Vegas, NV, for consideration.

Encs.

cc: Executive Directors, State Dental Boards
Executive Directors, Specialty Boards
Executive Directors, Specialty Associations
Executive Director, American Dental Association
Craig Busey, Esq., Chief Legal Counsel, American Dental Association
Executive Director, American Dental Education Association
Executive Director, American Student Dental Association
Executive Director, American Dental Hygienists' Association
Members, AADB Executive Council
Ms. Molly Nadler, Executive Director, AADB
Attorneys, State Dental Boards

AADB PROPOSED ADVERTISING GUIDELINES
By AADB Attorney Roundtable
October 9, 2011

SECTION 1. INTRODUCTION, PURPOSE AND DISCLAIMER.

A. INTRODUCTION AND PURPOSE: These provisions are intended to provide guidance to regulatory bodies in order to protect the health and general welfare of patient consumers from advertising that is false, deceptive or misleading.

B. DISCLAIMER: The following guidelines are deliberately generalized and intended for educational purposes only. The statutory and regulatory authority of each state dental board of examiners to regulate advertising infractions differs significantly as does each state's burden of proof in substantiating an infraction (i.e.,... "preponderance of evidence" versus "clear and convincing evidence" of an infraction.) Therefore, each state board should confer with assigned counsel to determine how to appropriately incorporate or modify these provisions in order to effectively protect patients from deceptive advertising. In addition, the substance contained herein, except where otherwise specifically cited, consists of a compilation of individual state statutory and regulatory provisions as well as Section 5 of the American Dental Association Principle of Ethics and Code of Professional Conduct.

SECTION 2. DEFINITIONS.

A. False or misleading.[1] Statements which a) contain a material misrepresentation of fact; b) omit a fact necessary to make the statement considered as a whole not materially misleading, c) intend or create an unjustified expectation about results the dentist can achieve, d) contain a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dentists, if that representation is not subject to reasonable substantiation.

B. Commercial Speech. Communication (such as advertising and marketing) that involves only the commercial interests of the speaker and the audience, and is therefore afforded lesser First Amendment protection than social, political, or religious speech.[2]

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[1] See American Dental Association Principle of Ethics and Code of Professional Conduct, Section 5, Advisory Opinion 5.f.2. (2011)

[2] Black's Law Dictionary – 9th Edition

SECTION 3. SAMPLE REGULATORY PROVISIONS.

A. *ADVERTISING IN SPECIALITIES*:

1. Recognized Specialties. A dentist may advertise as a specialist or use the terms "specialty" or "specialist" to describe professional services in recognized specialty areas only if the dentist limits the dentist's practice exclusively to one or more specialty areas that are:

   a. Recognized by a board that certifies specialists for the area of specialty; and
   b. Accredited by the Commission on Dental Accreditation of the American Dental Association.

2. Non-Recognized Specialties. Any dentist who advertises as a specialist or uses the terms "specialty" or "specialist" to describe professional services provided within his practice, which do not meet each of the criteria of Section 3(A)(1)(a) and (b) above, and therefore are not recognized specialty areas, shall ensure the advertisement fully discloses to the public the type of training the dentist completed and the dentist's experience in the non-recognized specialty area. To determine if a dentist's advertising disclosure for a non-recognized specialty comports with this provision and is not misleading, the Board may consider the following factors:

   a. Whether the disclosure indicates that the dentist's practice is limited to the asserted specialty area;
   b. Whether the disclosure fully informs the public of the educational curriculum the dentist obtained in the asserted "specialty" area including the duration of the program. Full disclosure of education content may further include a statement by the dentist which indicates whether the curriculum is:
      (i) Formal or Informal
      (ii) Full-time or Part-time
      (iii) Graduate or Post-Graduate Level;
      (iv) Recognized by a any board which certifies specialists for an asserted are of specialty
      (v) Recognized by the Commission on Dental Accreditation of American Dental Association;
   c. Whether the disclosure identifies the institution which conferred the "specialty"; and
   d. Whether the disclosure sets forth the number of clinical and didactic classroom hours the dentist has successfully completed in the asserted specialty area.

3. The following are recognized specialty areas and meet the requirements of Section 3A(1)(a) and (b) above:

a. Endodontics,
b. Oral and maxillofacial surgery,
c. Orthodontics and dentofacial orthopedics,
d. Pediatric dentistry,
e. Periodontics,
f. Prosthodontics,
g. Dental Public Health,
h. Oral and Maxillofacial Pathology, and
i. Oral and Maxillofacial Radiology.

4. A dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized specialty area under Section 3(A)(1)(a) and (b) and Section 3(A)(3)(a)-(i) above shall meet the criteria in one or more of the following categories:

a. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;

b. Board certified: A dentist who has met the requirements of a specialty board referenced in Section 3(A)(1)(a) and (b) of this Section), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

5. A dentist whose license is not limited to the practice of a recognized specialty identified under Section 3(A)(3)(a)-(i) above may advertise that the dentist performs or limits practice to the aforementioned recognized specialty services even if the dentist is not a specialist in the advertised area of practice so long as the dentist clearly discloses that the dentist is a general dentist or a specialist in a different specialty. For example, the following disclosures would be in compliance with this rule for dentists: "Jane Doe, DDS, General Dentist, practice limited to pediatric dentistry." "John Doe, DMD, Endodontist, practice includes prosthodontics."

a. In addition to this provision, if a dentist advertises he is a specialist in a non-recognized specialty area [an area not specifically recognized and set forth in Section 3(A)(3)(a)-(i) above], the dentist must fully disclose the type of training he has obtained, and its duration, in the asserted non-recognized specialty area. Factors in determining whether the dentist has fully disclosed this information include an assessment of each of the aforementioned criteria set forth in Section 3(A)(2)(a)-(d) above.

b. For example, the following disclosures would be in compliance with this rule for dentists: "John Doe, DDS, General Dentist, is a Dental Anesthetist whose practice is not limited to this area. Doe received certification as a Dental Anesthetist from the Dental Anesthetist Institute, after successfully completing an oral examination, not based on psychometric principles and following his successful completion of an informal, part-time, graduate level program lasting 2 days and consisting of 2 clinical hours of training and 2 didactic classroom hours of instruction. Dental Anesthesia is not recognized by a board which certifies specialists and is not accredited by the Commission on Dental Accreditation of the American Dental Association.

6. Dentists who choose to announce specialization in a recognized specialty area as set forth in Section 3(A)3(a)-(i) above should use "specialist in" or "practice limited to" and shall limit their practice exclusively to the announced special area(s) of dental practice, provided at the time of the announcement such dentists have met in each approved specialty for which they announce the existing educational requirements and standards set forth by the American Dental Association. Dentists who use their eligibility to announce as specialists to make the public believe that specialty services rendered in the dental office are being rendered by qualified specialists when such is not the case are engaged in unethical conduct. The burden of responsibility is on specialists, within recognized specialty areas, to avoid any inference that general practitioners who are associated with specialists are qualified to announce themselves as specialists in said recognized specialty areas.

7. Standards For Multiple-Specialty Announcements in Recognized Specialty Areas. The educational criterion for announcement of limitation of practice in additional specialty areas is the successful completion of an advanced educational program accredited by the Commission on Dental Accreditation (or its equivalent if completed prior to 1967) in each area for which the dentist wishes to announce. Dentists who are presently ethically announcing limitation of practice in a specialty area and who wish to announce in an additional recognized specialty area must submit to the appropriate constituent society documentation of successful completion of the requisite education in specialty programs listed by the Council on Dental Education and Licensure or certification as a diplomate in each area for which they wish to announce.

8. Specialist Announcement of Credentials in Non-Specialty Interest Areas. A dentist who is qualified to announce specialization under this section may not announce to the public that he or she is certified or a diplomate or otherwise similarly credentialed in an area of dentistry not recognized as a specialty area by the American Dental Association unless the advertisement contains a disclosure which fully informs the public of the dentist's training and experience in the non-recognized area. To determine whether the dentist's disclosure comports with this

provision, the Board may consider the factors identified in Section 3(A)(2)(a)-(d) above.

B. *ADVERTISING CREDENTIALS AND CERTIFICATIONS*:

1. Unearned, Nonhealth Degrees. A dentist may use the title Doctor or Dentist, DDS, DMD or any additional earned, advanced academic degrees in health service areas in an announcement to the public. The announcement of an unearned academic degree may be misleading because of the likelihood that it will indicate to the public the attainment of specialty or diplomate status. An unearned academic degree is one which is awarded by an educational institution not accredited by a generally recognized accrediting body or is an honorary degree.

a. The use of a nonhealth degree in an announcement to the public may be a representation which is misleading because the public is likely to assume that any degree announced is related to the qualifications of the dentist as a practitioner.

b. Some organizations grant dentists fellowship status as a token of membership in the organization or some other form of voluntary association. The use of such fellowships in advertising to the general public may be misleading because of the likelihood that it will indicate to the public attainment of education or skill in the field of dentistry.

c. Generally, unearned or nonhealth degrees and fellowships that designate association, rather than attainment, should be limited to scientific papers and curriculum vitae. In all instances, state law should be consulted.

d. Recognizing the potential of the public being misled or deceived by advertisement in these circumstances where a degree or status has not actually been conferred, the practitioner must include a disclosure in the advertisement which sets forth each of the following criteria:

(a) The institution the practitioner enrolled in educational program as well as the date of initial enrollment;
(b) The fact the degree or status has not yet been earned or conferred;

2. Credentials in General Dentistry. General dentists may announce fellowships or other credentials earned in the area of general dentistry so long as they avoid any

communications that express or imply specialization in a recognized specialty and the announcement includes the disclaimer that the dentist is a general dentist. In order to prevent a reasonable person from concluding that abbreviations indicate a designation of an academic degree, any use of abbreviations to designate credentials in non-recognized specialty areas in an advertisement shall be accompanied by full disclosure of the dentist's training and experience in the non-recognized specialty area. To determine whether the disclaimer fully discloses this information to the public, the Board may use the factors set forth in Section 3(A)(2)(a)-(d) above.

C. *NAMES AND RESPONSIBILITIES*:

1. Practice under name of licensee; full disclosure required.

(a) No person shall:

(i) Practice dentistry under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his full name, which shall be the name used in his license or renewal certificate as issued by the board, or his commonly used name.

(ii) Conduct, maintain, operate, own, or provide a dental office in the state of licensure, either directly or indirectly, under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his full name as it appears on the license or renewal certificate as issued by the board or his commonly used name.

(iii) Hold himself out to the public, directly or indirectly, as soliciting patronage or as being qualified to practice dentistry in the state of licensure under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his full name as it appears on the license or renewal certificate as issued by the board or his commonly used name.

(iv) Operate, manage, or be employed in any room or office where dental service is rendered or conducted under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his full name as it appears on the license or renewal certificate as issued by the board or his commonly used name.

(v) Practice dentistry without displaying his full name or his commonly used name as it appears on the license or renewal certificate as issued by the board in front of each dental office location if the office is in a single-story and/or single-occupancy building, or without displaying his full name or his commonly used name as it appears on the license or

renewal certificate as issued by the board on the outside of the entrance door of each dental office if the office is in a multi-occupancy and/or multi-story building.

(b) Name of Practice. Since the name under which a dentist conducts his or her practice may be a factor in the selection process of the patient, the use of a trade name or an assumed name that is false or misleading in any material respect is unethical. Use of the name of a dentist no longer actively associated with the practice may be continued for a period not to exceed one year.

(c) Dentist Leaving Practice. Dentists leaving a practice who authorize continued use of their names should receive competent advice on the legal implications of this action. With permission of a departing dentist, his or her name may be used for more than one year, if, after the one year grace period has expired, prominent notice is provided to the public through such mediums as a sign at the office and a short statement on stationery and business cards that the departing dentist has retired from the practice.

2. Responsibility. The responsibility for the form and content of an advertisement offering services or goods by a dentist shall be jointly and serverally that of each licensed professional who is a principal, partner, officer, or associate of the firm or entity indentified in the advertisement regardless whether the advertising has been generated by them personally, by their employees, or a third-party contractor.

D. *FEES.*

1. General: Dentists shall not represent the fees they charge in a false or misleading manner when advertising. Dentists shall state availability and price of goods, appliances or services in a clear and non-deceptive manner and include all material information to fully inform members of the general public about the nature of the goods, appliances or services offered at the announced price.

2. Disclosures: An advertisement which includes the price of dental services shall disclose:

a. The professional service being offered in the advertisement.
b. Any related services which are usually required in conjunction with the advertised services and for which additional fees may be charged.
c. A disclaimer statement that the fee is a minimum fee and that the charges may increase depending on the treatment required.

d. The dates upon which the advertised service will be available at the advertised price.

e. When a service is advertised at a discount, the standard fee of the service and whether the discount is limited to a cash payment.

f. When a service is advertised at less than market value, how the market value was determined.

g. If the advertisement quotes a range of fees for a service, the advertisement shall contain all the basic factors upon which the actual fee shall be determined.

E. *RECORD KEEPING OF ADVERTISEMENTS.*

1. Retention of broadcast, print and electronic advertising. A prerecorded copy of all broadcast advertisements, a copy of print advertisements and a copy of electronic advertisements shall be retained for **a reasonable period of time** following the final appearance or communication of the advertisement. In addition, the dentist shall document the date the dentist discovered a false or misleading advertisement, as well as the date and substance of all corrective measures the dentist took to rectify false or misleading advertisements. The dentist shall maintain documentation of all corrective measures for a reasonable period of time following the most recent appearance or communication of the advertisement which the dentist discovered was in inaccurate.

2. The advertising dentist shall be responsible for making copies of the advertisement available to the board if requested.

F. *FALSE AND MISLEADING ADVERTISING*:

1. The dentist has a duty to communicate truthfully. Professionals have a duty to be honest and trustworthy in their dealings with people. The dentist's primary obligations include respecting the position of trust inherent in the dentist-patient relationship, communicating truthfully and without deception, and maintaining intellectual integrity. In order to properly serve the public, dentists should represent themselves in a manner that contributes to the esteem of the profession. Dentists should not misrepresent their training and competence in any way that would be false or misleading in any material respect. No dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect.

2. Published Communications. If a dental health article, message or newsletter is published in print or electronic media under a dentist's byline, to the public without making truthful disclosure of the source and authorship or is designed to give rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dentist, the dentist is engaged in making a false or misleading representation to the public in a material respect.

3. Examples. In addition to the plain and ordinary meaning of the provisions set forth throughout these guidelines, additional examples of false or misleading advertising, include, but are not limited to:

a. Claims to provide or perform painless dentistry.
b. A statement which implies or suggests a procedure is guaranteed to be successful or creates false or unjustified expectation of favorable results.
c. A statement which implies or suggests superiority of services or materials that cannot be sustained. In this regard, the Board may request the licensee submit his or her evidence to sustain his claim to the licensing board before using the advertisement that includes the claim of superiority.
d. A statement which implies or suggests any guarantee of satisfaction except the guarantee to return a fee if the patient is not satisfied with the treatment rendered.
e. A statement which implies or suggests that a service is free or discounted when the fee is built into a companion procedure provide to the patient and charged to the patient.
f. A statement which contains a testimonial from a person who was not a patient of record.
g. A statement which misrepresents or misnames any dental method or system.

SECTION 4. LEGAL REQUIREMENTS FOR ADVERTISING REGULATIONS:

A. *FOUR PART TEST*: In commercial speech cases, the court will use a four-part analysis to determine whether a regulatory provision violates the First Amendment of the U.S. Constitution (see *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 at 566, 100 S.CT 2343, 65 L.Ed.2d. 341 (1980). The provision must meet **each** of the following criteria:

1. An expression which is protected by the First Amendment is one which concerns a lawful activity and is not misleading.
2. If the expression concerns a lawful activity and is not misleading, the governmental interest in regulating the expression must be substantial.
3. The regulation directly advances the (substantial) governmental interest asserted in that the regulation addresses actual harm (not a hypothetical harm); "[M]ere speculation or conjecture" (that the regulation will advance the substantial government interest) will not suffice; rather the State "must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." Id at 143 citing *Edenfield v. Fane,* 507 U.S. 761, 767 (1993).

a Public surveys are an acceptable means for a State Board to demonstrate the actual harm and to demonstrate that the proposed regulation will remedy the harm (See *Borgner v Brooks*, **284** F.3d 1204 at 1213 (11th Cir. 2002).

4. The regulation cannot be more extensive than is necessary to serve the government's (substantial) interest.

a. Courts favor Boards requiring disclaimers in advertising as an alternative to restricting content. (See *Borgner* at 1213-1214 and *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 648-649, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985).

SECTION 5. GROUNDS AND PROCEDURES FOR DISCIPLINARY ACTION FOR ADVERTISING VIOLATIONS.

A. In accordance with the Board's statutory and regulatory authority authorizing disciplinary action and denial of licensure for advertising violations as set forth below, the Board may refuse to issue or renew a license, may suspend or revoke a license, may reprimand, restrict or impose conditions on the practice of a licensee or applicant for licensure.

1. "Advertising violations" consist of expressions explicitly or implicitly authorized by a licensee, or applicant for licensure, which are false or misleading as otherwise referenced in these guidelines;

A. A licensee or applicant for licensure explicitly or implicitly authorizes advertising when the individual permits or fails to correct statements that are false or misleading. Failure to attempt to retract or otherwise correct advertising violations as directed by the Board may constitute a willful violation of these provisions and may be a separate and distinct independent violation of the Board's statutory or regulatory authority. A willful violation of the Board's directive, may subject the licensee or applicant to disciplinary action, non-renewal or denial of licensure.

B. When determining whether an "advertising violation" has occurred, the Board shall proceed in accordance with due process and its statutory and regulatory provisions which govern investigations and contested case proceedings.

Disciplinary Board Report for September 9, 2011

Today's report addresses the Board's disciplinary case activities for the fourth quarter of fiscal year 2011 which includes the dates of April 1 to June 30, 2011. Also included are the up-to-date figures for the first quarter for FY 2012.

The table below includes all cases that have received Board action since May 1, 2011 through August 19, 2011.

2011	Cases Received	Cases Closed No/Violation	Cases Closed W/Violation	Total Cases Closed
April '11	30	38	8	46
May "11	51	34	13	47
June '11	31	38	10	48
July '11	*24*	*32*	*3*	*35*
Aug 19, 11	*21*	*91**	*0*	*91*
Totals	157	233	34	267

- 72 Late license renewals closed with advisory letters

For the fourth quarter the Board received a total of 61patient care cases and closed a total of 99 for a 162% clearance rate. The pending caseload older than 250 business days was 9% and 92% of all cases were closed with 250 business day. These numbers exceed the agency's Quarterly Performance Measurement goals.

The Board currently has 210 open cases. One hundred and fifty nine of these cases are patient care. Fifty-three cases are in probable cause with 25 at Board member review.

For comparison, at the last Board meeting, we had 204 open cases with 52 in probable cause and 21 were at Board member review.

If you have cases for probable cause review, please complete them and return them back to us as soon as possible.

Board staff is currently working on the audits for OMS who perform cosmetic procedures. There were 24 cases opened for audit. Thirteen of these include practitioners who perform cosmetic procedures that meet the audit criteria. Seventeen of these cases have been closed no violation. Many licensees whose cases have been closed received an advisory letter reminding them to update their OMS profiles.

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*The Agency's Key Performance Measures.

- We will achieve a 100% clearance rate of allegations of misconduct by the end of FY 2009 and maintain 100% through the end of FY 2010.
- We will ensure that, by the end of FY 2010, no more than 25% of all open patient care cases are older than 250 business days.
- We will investigate and process 90% of patient care cases within 250 work days.